# Supreme Court of the United States

OCTOBER TERM, 1968

No. 53

## HAROLD KAUFMAN,

Petitioner,

\_\_v.\_

UNITED STATES,

Respondent.

#### ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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## EXCERPTS FROM THE RECORD IN CASE No. 66 C 218(3)

## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI ST. LOUIS, MISSOURI

66C 218(3)

HAROLD KAUFMAN, PETITIONER

UNITED STATES OF AMERICA

MOTION TO VACATE SENTENCE—Filed June 13, 1966

Harold Kaufman—Petitioner Pro Se Box PMB # 88176-A Atlanta, Georgia 30315

Comes the petitioner in person, pursuant to Section 2255, Title 28, U.S.C.A.—see Sanders v. United States, 373.

#### STATEMENT

Petitioner was tried in the United States District Court for the Eastern District of Missouri, for an alleged robbery of a Federally insured savings and loan association, in violation of 18, U.S.C. 2113(A), and d.

Petitioner's primary defense was insanity at the time of the physical acts constituting the crime, but no other defenses were waived.

## REASONS FOR GRANTING THE MOTION

T.

Was Petitioner's condition at the time he was under the drug (Librium) such as to warrant him to consult with defense counsel during the course of the trial?

It is urged here that defense counsel could have not effectively given petitioner the assistance of counsel as required by the Due Process clause of the Fifth Amendment to the Bill of Rights. He makes no direct charge that defense counsel in the trial court did not discharge his duties and obligations required in criminal cases for the defense of accused persons on trial, such counsel had no cooperation from the petitioner to give him information as to dates, names, and places that would have been relevant to his defense. The record discloses that petitioner was under the influence of drugs at the time of trial; therefore, his cooperation being an essential factor in assisting his counsel as to events, dates, and places, was lost in the course of the proceedings in the trial court and his failure to cooperate with defense counsel caused ineffective representation denying him of due process of law. Was petitioner being given drugs while confined and during the course of the trial? The record discloses that the Warden, Mr. William Boeger, of the St. Louis Jail, testified that petitioner was being administered drugs.

#### DIRECT EXAMINATION

By Mr. Barsanti: (Tr. 254-255, 256).

Q. Do you have with you the records of Harold Kaufman, Warden, who has been in your jail?

A. I do, sir.

Q? Would you refer to the records and indicate, see whether they indicate whether any drugs have been prescribed to Harold Kaufman?

A. On March 21, 1964, the doctor's notation is Librium T.D.A.S. Milligrams.

Q. Has he been receiving that since that time?

A. That is right, sir. Mr. Barsanti: No further questions.

## CROSS EXAMINATION

Q. Doctor, on March 21, he was given 5 milligrams of Librium, according to your records?

A. According to our records, yes.

Q. Do you have any records of any other date on which

he was getting anything?

A. Well, it's been continuous, sir, since that date. What happens, the pills are gotten from a drug store, Grand and Gravois Drugstore, and delivered two or three different times, they have, I think they have refilled that prescription, but he is still taking them, and has continuous since that date. Id (Tr. p. 254-55-56).

In the case at bar, it is clear that petitioner was on trial for a serious offense and could not cooperate, with his defense attorney in that he was under the influence of a drug which caused him to be inactive and unable to participate in such defense in reference to events and dates and names of persons which would have proved essential to his attorney. The drug was being administered continuously according to the record and the Warden's testimony. It does not say how often he was given the 5 mm of Librium, where, as here, petitioner was taking such drugs like he was being given aspirins, which caused him to be in a state of mind that rendered him useless during the course of the trial. It is urged here that denial of effective assistance of counsel violates due process of law. Powell v. Alabama, 287 U.S. 45, 69; Johnson v. Zerbst, 304 U.S. 458; Glasser v. United States, 315 U.S. 60, 70, 72. It is urged here that where a defendant is being represented by an attorney and he fails to be cooperative with the counsel that such is a nullity and he is in fact denied due process of law as provided for by the Fifth Amendment. It is clear that the trial court should have determined the question of petitioner's ability to cooperate with his attorney and in finding that he was under the influence of a drug should have declared him not competant to stand trial and declare a mistrial when

such facts were brought to the court's attention. Even though there was not a pre-trial motion that the petitioner was under the influence of Librium, it was disclosed to the court below during the course of the trial (Tr. 254-55-56), and it was the duty of the trial judge to make a determination at that point, whether petitioner was mentally capable of cooperating with his counsel; therefore, petitioner did not waive his right to due process of law, where, as here, he could not have the effective aid of his counsel as required by Powell v. Alabama, Supra, 287 U.S. 45, 69, the ineffectiveness of his representation was due to his failure to consult with counsel as to names of persons, dates and events that would have been material to his defense and resulted in a verdict of not guilty. Obviously, this Honorable Court cannot lightly cast aside that the record fails to disclose such facts, in that.

#### MOTION FOR NEW TRIAL

The Court: As to No. 7, it was not developed, and certainly there was no pre-trial motion by counsel that the defendant would receive Ibrium.

Mr. Barsanti: I didn't know it, your honor.

The Court: And there was no request that the trial be discontinued so that will be overruled. Now what else

have you got?

Here the record is clear that it was known that petitioner was under the influence of Librium during the trial in that the Warden of the jail disclosed it by his testimony (Tr. 254, 255-56). Where such evidence disclosed to the trial court that Librium was being administered to the petitioner, it was the duty of the trial judge to make a determination as whether or not such drug was being administered in amounts that would cause him to be in a state of mind that would cause him not to cooperate during the trial.

The record further discloses that petitioner at the time preceeding; during and after the trial was receiving outpatient treatment at the City Hospital #2 (see record of Marshal), the petitioner made over six visits to the clinic with severely ulcerated leg. He lost over thirty

pounds and was physically as well as mentally ill. Warden of the City Jail of St. Louis testified at petitioner's trial in the Southern District of Indiana:

"Harold Kaufman was a mentally disturbed individual, you couldn't talk sense to him. He ranted and raved, walked up and down all the time. He locked himself up in solitary confinement because he was afraid he might-kill himself."

Petitioner does not say that defense counsel was incompetant or failed to defend him to the best of his ability; to the contrary, the petitioner has stated and will state again that his attorney gave petitioner the only representation that was available as to the defense at that time. Defense counsel had no cooperation from petitioner and it passed on to defense counsel a difficult problem to prepare the case and defend it as to give the petitioner the effective assistance of counsel as required by the Fifth and Sixth Amendments to the Constitution. Johnson v. Zerbst, 304 U.S. 458; Powell v. Alabama, 287 U.S. 45; Glasser v. United States, 315 U.S. 60, 70, 72.

It is urged here that when all of the facts are considered in light of the record and petitioner's inability to cooperate with his defense counsel it cannot be said he had that fair trial as provided for by the Sixth America ment to the United States Constitution. His inaction and silence as to being unable to cooperate with defense counsel while he was under the influence of Librium is evidence in itself sufficient to justify a reversal of the conviction and grant the petitioner a new trial. At the present time, he is not under the influence of Librium nor is he physically sick, and he is not in a jail from where he was administered drugs and kept him at disadvantage during his trial and at times caused him undue hardships depriving him of due process of law and rights secured to him by the Federal Constitution. Under such circumstances, how can it be said that petitioner had that fair and impartial trial as required by the laws and Constitution of the United States. The right to have the assistance of counsel is a right guaranteed by the Sixth Amendment to the Bill of Rights. The right to have due process

of law is a right guaranteed by the Fifth Amendment. Such rights are manditory and life and liberty cannot be dispersed with if there is a showing that due process of law was violated in a criminal trial before a jury, as was said in Glasser v. United States, Supra, 315 U.S. 60, 70, 72, that:

"The Bill of Rights are the protecting bulwark against reach of arbitrary power deemed necessary to insure human rights of life and liberty and a federal court can not constitutionally deny an accused of the assistance of counsel. \* \* \*"

In the case at bar, how can the petitioner have had effective assistance of counsel if he was under the influence of Librium and physically sick during his trial; how could counsel serve him and discharge his obligation to protect petitioner if the influence of such drug caused him to be inactive and unable to cooperate? Here there is a record disclosing a severely disturbed person, mentally as well as physically sick being administered drugs during the course of a criminal trial in Federal Court. Under such circumstances surrounding the instant case. it can not be said that he had the due process of law as required by the Fifth Amendment. Nor can it be said he had the effective assistance of counsel as required by the Fifth and Sixth Amendments to the Bill of Rights. As was said in Glasser v. United States, Supra, 315 U.S. 60, 70, 72, "Denial of effective assistance of counsel violates due process of law."

It is urged here that had petitioner been without the physical pain, under the influence of a prescription drug, he could have brought forth certain crucial parts that would have aided his court-appointed attorney, to procure witnesses, relative to his mental condition at the time of the alleged crime. Further, he would have been able to procure witnesses to prove the truthfullness of Pat Scott, the chief lay witness for defense.

How much and how many drugs were being administered to the defendant? For eighty-seven days in the Federal Medical Center petitioner was given approximately 2,175 mm. of Librium; approximately 4500 mm

of Librium in the St. Louis City Jail; and immediately after the trial 15,000 mm. of Thorozene in West Street Federal House of Detention; also, 15,000 mm of Benedril at the House of Detention. In view of all these medications prescribed by various doctors, how can this court or any court of the United hold that a defendant in a criminal case can be cooperative in assisting his counsel before, during, and immediately after his trial? How can this Court say defendant had due process of law as provided for by the Sixth Amendment to the Bill of Rights? When the record is fully reviewed in light of all the Medical records it spells out that defendant did not have that fair and impartial trial as guaranteed to him by the Sixth Amendment.

.It is respectfully urged that this Court consider the

facts, that:

In Sohol's Handbook of Federal Habeas Corpus (1965), and in particular with discussion as to Title 28, Section 2255, the following at page 134 is set forth:

"It cannot be stressed too much that the language of section 2255 itself requires a hearing with findings of fact and conclusions of law, (4) unless the motion and the files and the records of the case conclusively show, that the prisoner is entitled to no relief..." (Emphasis in original) 85

Thus it can be seen that the statute imposes upon the sentencing court an affirmative duty to look into the records of the case. Only if they conclusively show that the petitioner is entitled to no relief, can the motion be dismissed without a hearing.

In addition to the above, the Supreme Court has made

a further suggestion:

"Finally, we remark that the imaginative handling of a prisoner's first motion would in general do much to anticipate and avoid the problem of a hearing on a second or successive motion. The judge is not required to limit his decision on the first motion to the

<sup>85</sup> Reed V. United States, 291 F.2d. 856-57 (4th Cir.)

grounds narrowly alleged, or to deny the motion out of hand because the allegations are vague, conclusivnal, or inartistically expressed. He is free to adopt any appropriate means for inquiry into the legality of the prisoner's detention in order to ascertain all possible grounds upon which the prisoner might claim to be entitled to relief." 86

"It ought not be necessary to add that if there exists any doubt whatsoever as to whether to hold a hearing,

the hearing should be held."

In numerous decisions, the New York Court of Appeals has declared unequivocally that in coram nobis motions a petitioner must be afforded a hearing upon disputed allegations which, if proved, would entitle him to a writ unless the record shows conclusively that the allegations are false and unless there is no reasonable probability at all that the defendant's averagents are true. The fundamental right of hearing is guaranteed even though a defendant's allegations may seem "improbable or unbelievable" and though they "may tax credulity". See e.g., People v. Langan, 303 N.Y. 474, 477 (1952); People v. Richetti, 302 N.Y. 290, 296 (1951); People v. Guanzlia, 303 N.Y. 338, 343, (1951); People v. Silverman, 3 N.Y. 2d 200, 203 (1957); People v. Picciotti, 4 N.Y. 2d 340, 344 (1958).

Petitioner grants that he was sent to the United States Medical Center, Springfield, Missouri, for an examination as to his competency to stand trial, and as of February 1964, he was returned as competant to assist in his defense even though suffering from a major mental illness, "Schizophrenic Reaction, Paranoid type, in PARTIAL rather stable remission." This adjudication in February did not absolve this Court of its duty in August 1964, of ordering a hearing sua sponte, when the fact of his being under tranqualizers during the pre-trial period and trial period was brought to its attention as was done here, by Warden Boeger, of the St. Louis City Jail. Certainly this Court excepts the fact "that the con-

<sup>86</sup> Sanders V. U. S., 378, U.S. 1, 22 (1963)

viction of an accused person while he is legally incompetent violates due process." Bishop v. United States, 350 U.S. 961, 1956).

Petitioner has no funds to employ an attorney; therefore, he must present this petition pro se. All medical records can be produced under subpoena of this Court. Petitioner, therefore, must rely on his sworn oath of verity, yet assures this court upon a proper hearing he can produce all medical documents to prove all his allegations. This is the only definite means to afford petitioner due process of law as is his right under the Fifth Amendment to the Constitution, and to have further proceedings under 2255, a full and complete review of his conviction must be held.

WHEREFORE, petitioner respectfully prays that this petition for a hearing pursuant to 2255, Title 28, be granted. That he have other and different relief that may seem meet and just to this Honorable Court.

Respectfully submitted,

/s/ Harold Kaufman HAROLD KAUFMAN Petitioner Pro Se Box PMB # 88176-A Atlanta, Georgia 30315

Dated:

June 8th, 1966.

[Jurat Omitted in Printing]

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION a

Cause No. 66C 218(3)

HAROLD KAUFMAN, PETITIONER

28.

UNITED STATES OF AMERICA, RESPONDENT

SUPPLEMENTAL MOTION TO VACATE SENTENCE— Lodged September 9, 1966

Comes now the Petitioner, HAROLD KAUFMAN, by and through his attorney of record, A. H. HAMEL, and by leave of Court first had and obtained files his Supplemental Motion to Vacate Sentence and moves this Court, pursuant to 28 U.S.C. Sec. 2255, to enter an order vacating his sentence.

1. Petitioner realleges and incorporates by reference each and every allegation contained in Petitioner's Motion

to Vacate Sentence heretofore filed herein.

- 2. Petitioner is presently serving a sentence for twenty years for the alleged robbery of a federally insured savings and loan association in violation of 18 U.S.C. 2113 (a) and (d) imposed by the United States District Court for the Eastern District of Missouri on or about the 27th day of August, 1964. A copy of the judgment of that Court is attached to this supplemental petition as Exhibit "A". Petitioner was heretofore confined in the United States Penitentiary at Atlanta, Georgia and by prior order of this Court was removed to the City Jail in the City of St. Louis for the purposes of Petitioner's Motion to Vacate Sentence heretofore filed herein.
- 3. The conviction and sentence pursuant to which Petitioner is being detained was imposed in violation of the Fourth, Fifth and Sixth Amendments to the United States Constitution. The facts showing the constitutional violations herein alleged are as follows, to-wit:
  - (a) Petitioner was given the drug Librium while incarcerated in the St. Louis City Jail (Tr. pp. 254-256) and in addition, Petitioner states and alleges that other drugs were administered to him prior to, during and subsequent to the date of trial. It is Peti-

tioner's contention and belief that the administration of such drugs resulted in violation of rights guaranteed to him by virtue of the Fifth and Sixth Amendments to the Constitution of the United States of America in that the drugs made him incapable of cooperating fully with his counsel in preparing for trial, thereby depriving him of the effective assistance of counsel; and that the drugs affected his appearance and demeanor adversely during the trial, in effect forcing him to testify against himself in an

incriminating manner.

(b) That prior, during and subsequent to the aforesaid trial, Petitioner was otherwise incompetent to participate in said trial for the reason that he was physically and emotionally sick. That during and after the trial the Petitioner continued to receive outpatient treatment at the City Hospital No. 2. (See record of Marshall). Petitioner made over six visits to the clinic with a severely ulcerated leg. He lost over 30 pounds and was physically as well as mentally ill. As a result, counsel for defense had no cooperation from Petitioner in the preparation and defense of the aforesaid case and was unable to give the Petitioner the effective assistance of counsel as required by the Fifth and Sixth Amendments to the Constitution.

(c) On the trial of the case, a gun, \$11,250.00 worth of American Express Travelers Checks and several other physical objects were admitted into evidence. These items had been removed from Petitioner's car without a search warrant after his arrest for a traffic violation and after his car had been towed to a garage. A garage attendant discovered the gun approximately one-half hour after the arrest. (Tr. pp. 74, 81, 102-112). Other objects were discovered by F.B.I. agents approximately four and onehalf hours after the arrest. (Tr. 72, 102-112). Trial counsel objected to the introduction into evidence of said items for the reason that such items were obtained by reason of an unlawful search and seizure in violation of the Fourth Amendment to the Constitution of the United States of America.

(d) On May 15 and June 2, 1964 Petitioner's trial counsel filed motions for the issuance of subpoenaes, together with Petitioner's supporting affidavits setting forth the addresses of certain proposed witnesses and the need for and nature of their testimony. (District Court Record Pages 45, 46, 56, 61). One witness so requested, Marian Blake, did not appear and Petitioner was effectively denied the value of her testimony. It is alleged upon information and belief that one Richard Stein, United States Attornel, Southern District of Indiana, stated that Marian Blake's whereabouts were known and that her brother worked for the Bureau of Prisons for the past five years. This witness was essential to the defense; that she was a nurse and her testimony as to the Peti-· tioner's sanity immediately preceding the crime would have tended to corroborate the testimony of Pat Scott and contributed to a proper foundation for the psychiatric opinions of Dr. Waitzel and Dr. Glotfelty. It is further alleged that counsel for defense took all necessary steps to assure the presence of Marian Blake, who was expected to be an important witness. If the Government knew where she could be found and suppressed this information it amounted to the suppression of testimony in evidence in violation of the Sixth Amendment to the Constitution of the United States of America.

Because of the foregoing facts, Petitioner is being restrained of his liberty by the Respondent in violation of the Constitution of the United States, and he therefore prays that this motion be granted and an order entered vacating his sentence.

Dated: September 9, 1966

/s/ Harold Kaufman

/s/ A. H. Hamel
Attorney for Petitioner
HAROLD KAUFMAN
8000 Forsyth Blvd.
Clayton, Mo. 63105

[Jurat and Certificate of Service Omitted in Printing]

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

Cause No. 66 C 218(3)

## HAROLD KAUFMAN, PETITIONER

28.

## UNITED STATES OF AMERICA, RESPONDENT

Great Britain and Northern Ireland )
London, England ) SS
Embassy of the United States of America )

## AFFIDAVIT OF PATRICIA SCOTT

PATRICIA SCOTT, upon first being duly sworn, deposes and says as follows, te-wit:

1. That my present address is c/o Sweeney 37 C, Hermon Hill, Warmstead, London, E.11, England.

2. That if I am called to testify in the above-captioned proceeding I will testify:

(a) that prior to and during the course of trial Harold Kaufman was under serious emotional strain and was severely agitated, which increased in severity when Harold Kaufman learned that my children had been taken away from me and that I had been living with one Dillard Morrison;

(b) that certain evidence was not introduced during the course of trial which could have affected the jurors' findings, particularly that Harold Kaufman was addicted to cocaine and had a very low tolerance for narcotics and while under the influence of narcotics lost control of his actions;

(c) that I, together with Arthur Cooper, on or about December 14, 1963, cashed a Western Union money order to pay for the rental of the red Rambler automobile used by Harold Kaufman; and further, that Arthur Cooper authorized Harold Kaufman to

use the aforesaid automobile that he was driving at the time he was apprehended for the holdup of the Roosevelt Federal Savings and Loan Association on

December 16, 1963;

(d) that I personally knew Marian Blake and I know that Marian Blake knew Harold Kaufman and that Marian Blake's testimony in Harold Kaufman's behalf was important and material to Harold Kaufman's defense of insanity by reason of her occupation as a nurse, and because she had an opportunity to observe Harold Kaufman prior to the commission of the aforesaid offense.

3. That if I am requested to appear as a witness in the above-captioned proceeding, I will appear voluntarily and voluntarily accept service of subpoena if the United States Government will pay the cost of my transportation, room and board to and from my present address in London, England. I do not have sufficient means to defray these costs on my own.

/s/ Patricia Scott
PATRICIA SCOTT

[Jurat Omitted in Printing]

#### IN THE UNITED STATES DISTRICT-COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

66C 218(3)

## · HAROLD KAUFMAN, PETITIONER

vs.

. United States of America, respondent

MEMORANDUM OPINION AND ORDER-March 16, 1967

Petitioner, presently serving a sentence of 20 years imposed by this Court for armed robbery of a federally insured savings and loan association, seeks relief under § 2255, Title 28 U.S.C. A plenary hearing has been held on his original and supplemental motions to vacate the sentence and judgment, and the matter is now before the Court.

Kaufman's sole defense at his trial was insanity when, the offense was committed. This issue was submitted to the jury ufider appropriate instructions. See Kaufman v. United States, 350 F.2d 408, for a resume of the trial

evidence bearing on the issue of insanity.

The major issue on the instant motions is whether petitioner was incapable of cooperating fully with his counsel in preparing for trial and in the trial itself by reason of his alleged physical and emotional illness and his taking of drugs prior to, during, and subsequent to the trial. Based on this alleged inability to cooperate, petitioner now claims he was thereby deprived of the effective assistance of counsel.

The Court appointed counsel to assist petitioner on his \$2255 motion, and ordered that he be returned to St. Louis from the penitentiary at Atlanta to enable him to consult with his appointed counsel. Ample time thereafter was afforded petitioner and his counsel to prepare for the hearing. Subpoenas were issued at the govern-

ment's expense for the production of all records and documents requested by petitioner 1 and for certain witnesses.

On motion of petitioner, the Court appointed Doctor Paul T. Hartman, an exert in the field of psychiatry and neurology, for the purpose of evaluating the medical records and documents bearing upon the issue. Br. Hartman had also examined petitioner prior to his trial, pursuant to an order obtained by petitioner, but petitioner did not

permit him to testify at the trial.

Petitioner was apprehended in December, 1963, and shortly thereafter Mr. John Barsanti, Jr., a capable and experienced attorney (now president of the St. Louis Bar Association), was appointed to represent him. Mr. Barsanti, together with Mr. James W. Singer who was associated with him in the practice of law, entered their appearance for Kaufman, and both Mr. Barsanti and Mr. Singer thereafter represented Mr. Kaufman in preparing for the trial and in the trial itself.

Counsel properly filed a motion under 18 U.S.C., § 4244, for the determination of Kaufman's mental capacity, and the Court ordered him taken to the Medical Center at Springfield for examination. The diagnosis made at that institution was schizophrenic reaction, paranoid type, in partial, rather stable remission, but that Kaufman had a factual understanding of the proceedings against him and was able to assist rationally in his defense. On the basis of the report of that institution, the Court found Kaufman competent to stand trial.

¹ Subsequent to the submission of this case, Kaufman informed the Warden of the penitentiary that the records which had been forwarded to the Court in response to the subpoena did not include records of the Federal Detention Headquarters in New York City subsequent to his conviction and sentence. At his request and with the consent of the government's attorney, we obtained a copy of these records for the purpose of considering them in rendering our decision as fully as though they had been admitted in evidence. We now note that Kaufman was in error, since we find upon examination of the Court file that an identical copy of these records had in fact been included with the others forwarded by the Warden. However, neither this nor any other record of Kaufman's medical treatment subsequent to his conviction were offered in evidence.

While Kaufman was at the Springfield Medical Center, librium was regularly prescribed and administered to him. Librium is a tranquilizer, a drug commonly used for relief of symptoms of anxiety and tension. After he was returned to St. Louis in March 1964, and while confined in the St. Louis City Jail awaiting trial, Kaufman continued to take librium under prescription by the jail physician. This fact was disclosed at the trial by the warden of the Jail testifying on behalf of Kaufman. However there was not the slightest indiction or contention at the time that Kaufman's use of librium affected to any extent whatsoever his ability to cooperate with and assist his counsel. In fact, Mr. Barsanti was of the opinion at the present hearing that it had no effect on Kaufman's ability to assist him at the trial.

The dosage which had been prescribed for Kaufman at the City Jail was 3 capsules daily of 5 mgm each. This is admittedly a very small amount, so much so that according to Kaufman, the prescribed dosage was insufficient to have any beneficial effect. His present story is that beginning in the latter part of March, instead of taking the librium "pills" as prescribed, and without the knowledge of anyone other than fellow prisoners, he would accumulate the capsules, and when he had saved some 10 or 15 he would distill them and inject them into his body by means of an eyedropper and syringe. In fact, his testimony was to the effect that he and other prisoners who were prescribed pills would use the pills in common.

Kaufman testified that each day during the trial, prior to leaving the jail for the court proceeding, he took 100 mgm of librium. His contention is that as a result of so doing, he was caused to become drowsy, sleepy and lackadaisical. In this connection, he swore that although he had discussed his case constantly (almost daily) with Mr. Singer and infrequently with Mr. Barsanti prior to trial, he did not, except on one occasion, say "one word" to his counsel during the trial itself, which lasted four days. On the other hand, Mr. Barsanti testified that he conferred with Mr. Kaufman at a number of court recesses as well as on at least two mornings before the trial proceedings resumed for the day. He was aware of the fact

that petitioner was taking librium, but since Kaufman's statements to him were consistent with the jail records it would appear that Kaufman made no disclosure of the fact, if so, that the quantity of librium actually taken by him was far in excess of what had been prescribed.

In any event, prior to the trial, Kaufman cooperated fully with his counsel and they were able to obtain from him all necessary material requested. At the trial Kaufman sat at the counsel table and there was nothing in his appearance which would indicate to his counsel (or to the Court for that matter) either drowsiness or a lack

of awareness of the proceedings.

Dr. Hartman testified that a dosage of 100 mgm of librium is not uncommon and that its effect varies with the individual. He further testified that although such quantity would make a person drowsy, such drowsiness would be apparent to others, that is, the patient's head would droop, his eyelids close and he would doze. However, this state of drowsiness would last only 1 or 2 hours after the 100 mgm of librium were taken intravenously, and at the end of such period, the patient would return to a normal state of wakefulness.

It was Dr. Hartman's opinion that assuming Kaufman took the amount of librium he claimed, he would nevertheless be coherent, would understand the proceedings, and could communicate with counsel, and that his ability to assist counsel at his trial would not be impaired. The testimony of Mr. Barsanti corroborated Dr. Hartman's opinion. At all times, both before and during the trial, in the morning as in the afternoon, Kaufman gave no appearance of being drowsy. This Court personally observed Kaufman, and on occasion during recess talked with him, and in the judgment of the Court he was at all times alert, aware of what was transpiring, and capable of fully cooperating with and assisting his counsel.

Accepting, for the purpose of this motion, Kaufman's testimony that he accumulated the 5 mgm tablets of librium and that each morning during the trial, surreptiously without the knowledge of his counsel, he took as much as 100 mgm of this drug mixed with other unknown drugs, we find and hold that the taking of said drugs did

not affect Kaufman's ability to cooperate with and assist his counsel either before or during the trial, nor did it affect his appearance and demeanor during the trial.

We further find and hold that neither the physical ailments for which Kaufman was treated before and after the trial, as shown by the records subpoenaed by him and his testimony at the hearing, nor his emotional or any other condition alleged in his motions rendered him incompetent to participate in his trial nor prevented him from fully cooperating with his counsel in the preparation and defense of the charge against him. Kaufman's counsel not only was able to but did in fact give him effective assistance.

The supplemental motion to vacate, prepared by appointed counsel, asserts as a further ground for relief that certain physical evidence was obtained by an allegedly unlawful search and seizure of Kaufman's automobile after his arrest. The record does not substantiate this claim. In any event, this matter was not assigned as error on Kaufman's appeal from conviction and is not available as a ground for collateral attack on the instant § 2255 motion. See Warren v. United States, 8 Cir., 311 F.2d 673, 675 (1963); Springer v. United States, 8 Cir., 340 F.2d 950 (1965).

The final ground set forth in the supplemental motion is a suggestion, but not a positive assertion, that the Government knew where Marian Blake, a witness whom Kaufman unsuccessfully tried to subpoena; could be found but failed to disclose this knowledge to the defense. The record shows that Marian Blake, a nurse, was one of a group of persons with whom Kaufman fraternized for a short period of time prior to his arrest. It is contended that her testimony would have tended to corroborate that of Patricia Scott concerning the alleged insanity or mental illness of Kaufman, and that because of her profession her testimony would have been of great value.

The record discloses that on May 15, 1964, Kaufman filed a motion requesting that Pat Scott, Marian Blake, and Detective Joseph Kiernan be subpoenaed at the expense of the government. The addresses of these three, all in New York, were set forth in an accompanying affi-

davit of Kaufman which stated in general terms, that "he expects said witnesses to testify as to facts and circumstances pertaining to his mental condition immediately prior to December 16, 1963, the date of the offense." Subsequently, Kaufman filed two other affidavits, dated May 28, 1964, outlining at greater length the testimony he expected to adduce from these witnesses. One affidavit pertained to Detective Kiernan and the other related to Pat Scott and Marian Balke collectively, and again the

address of each was specifically set forth.

On June 9, 1964, the motion for issuance of subpoenas was sustained, and subpoenas issued. A number of other subpoenas were also requested, and the witnesses were ordered subpoenaed at the government's expense. The only witness, other than Dr. Fredericks, not ultimately found by a federal marshal was Marian Blake. The marshal in New York City made a non est return on the Marian Blake subpoena, which was filed in Court June 29, 1964, stating that the witness had moved from the address given without leaving a forwarding address. There is no evidence whatever that Kaufman made any further inquiries or attempted to find Marian Blake during the period of almost two months which followed the filing of the non est return. We note that the trial commenced August 24, 1964. It would appear to us that one or more of the other associates of Kaufman in New York would have known where Marian Blake could be found, if her presence were really necessary.

Petitioner does not claim that the marshal's return was false or made in bad faith, nor does he contend that the United States Attorney for this District or anyone in or connected with his office had any knowledge of Marian Blake's whereabouts or even that any of them had actual knowledge that a non est return had been filed. There is no charge that the local officials were requested to search for or to find the witness, nor is there the slightest intimation that Marian Blake was made unavailable to Kaufman through the procurement of the government. In short, there was no concealment or suppression of evidence. Cf. Ferrari v. United States, 9 Cir., 244 F.2d 132,

14-142.

The motion directed to this point simply states, "upon information and belief that one Richard Stein, United States Attorney, Southern District of Indiana, stated that Marian Blake's whereabouts were known and that her brother worked for the Bureau of Prisons for the past five years." Kaufman was subsequently tried and convicted in Indiana in the spring of 1966, a fact which appears from a letter motion which he filed in this Court under Rule 35. Whatever Stein may have said was undoubtedly in connection with that case and at a time sub-

sequent to the trial in this district.

In any event, assuming that Mr. Stein made the statement attributed to him on information and belief, or even that it would have been possible for Mr. Stein to have located Marian Blake had he been requested to do so, we see no possible basis either in law or in fact for Kaufman's present contention that this information was suppressed by the government in violation of his constitutional rights. Kaufman makes no claim that Mr. Stein was aware in June or even in August, 1964, that a subpoena had been issued for Marian Blake and that a non est return had been made in the Eastern District of Missouri, nor that any knowledge Mr. Stein may have had in preparing the Indiana case for prosecution was communicated to the officials in this District. In these circumstances, whatever knowledge Mr. Stein may have had at some unspecified time as to the whereabouts of Marian Blake clearly cannot be imputed to the United States Attorney for the Eastern District of Missouri.

As stated supra, subpoenas were issued at the expense of the government, on petitioner's motion, for the appearance of certain witnesses, including the jail physician. The motion to subpoena other witnesses was denied, and we now reaffirm the propriety of that ruling as to each

such witness.

(1) Dr. Ambellur Fredericks, a clinical psychologist, participated in an examination of petitioner in December, 1960, at the State Psychiatric Clinic in Jamestown, North Dakota, but has not seen or examined petitioner since then. Dr. Fredericks, now in Boston, Massachusetts, resigned from the Clinic in Jamestown in March, 1961.

Any testimony he might now give, relating to an examination over six years ago and some four years prior to petitioner's trial, would be entirely too remote, even if it were otherwise relevant. In this connection we note that Dr. I. David Waitzel, the psychiatrist director of the Clinic (under whom Dr. Fredericks administered his psychological evaluation of petitioner), testified at great length at the trial of this case on behalf of petitioner.

(2) Richard Stein, the U.S. Attorney for the Southern District of Indiana, was said by petitioner to have testified at a pre-trial hearing conducted in connection with the Indiana prosecution. Petitioner's affidavit recites that be "expected to prove by him that during the course of the trial the Government knew of the whereabouts of Marian Blake and could have produced her for trial if the Government had made a diligent effort to do so." For the reasons stated supra, such allegation even if it were sustained, would be insufficient to warrant the grant of the relief here prayed.

(3) Marian Blake's presence at the hearing was sought for the purpose of allegedly proving that had she testified at the trial she would have "corroborated" the trial testimony of Patricia Scott. In arriving at our decision, we have made such assumption. We also note that the address now given for Marian Blake is the very same address listed on the subpoena which was returned non est on June 15, 1964, with the notation that she "moved from the address over 2 mos. ago and left no forwarding

address."

(4) Jerry Smith, then a fellow prisoner in the City Jail and now confined in the U. S. Penitentiary at Terre Haute, Indiana, is alleged to have witnessed petitioner's mental agitation at the City Jail and to be able to corroborate the claim that petitioner "took a medication by injections as well as orally." Parenthetically, we note that nothing in this affidavit gave any notice that Smith could corroborate the accumulation by petitioner of a number of 5 mgm of librium tablets, and that petitioner administered to himself as much as 100 mgm daily during the trial. In testifying at the hearing petitioner stated that he had met Smith about a week and a half before

trial, so obviously Smith could not have had any knowledge of what petitioner had done prior thereto. Petitioner further testified that other prisoners, including a Paul Hammer, participated with them in mixing, distilling and chewing drugs for self-administration. Yet petitioner sought only Smith's testimony, although presumably the other prisoners would have been more accessible to this Court. Under the circumstances, we were unwilling to order Smith's return from Terre Haute. In any event, to the extent that Smith could have corroborated petitioner's testimony, we have assumed such testimony to be true.

(5) The remaining witness whose personal presence was sought by petitioner is Patricia Scott, the same Patricia Scott for whom we had issued a writ of habeas corpus ad testificandum July 2, 1964, requiring her to be brought at the government's expense from a correctional institution in New York State where she was then serving a term for attempted burglary. Miss Scott, a woman of admittedly low morals, the mother of three children, each born out of wedlock by different fathers, testified at Setitioner's trial. The record also shows that prior thereto, petitioner's counsel had consulted with and obtained information from her additional to that within the knowledge of Kaufman. We have been advised that Miss Scott has since been deported to England where she now resides. The record shows that petitioner proposed marriage to Miss Scott on the first occasion he met her (August, 1963), and he professes to love her and her illegitimate children. The record also shows that Miss Scott does not return this love, but is interested only in whatever money and other benefits she may derive from his illegal activities. That Miss Scott would welcome an all-expense paid trip from England to the United States is understandable. So, too, is petitioner's desire to bring her back and thereby enable him once again to see the woman he "loves." It is unlikely, under the record, that petitioner would have another such opportunity for many years to come, since he is under sentence not only in this Court and in the Southern District of Indiana, but is also still to serve a term of some 71/2 to 10 years consecutive to the sentence imposed in this Court for an offense against the State of New York to which he pleaded guilty. In any event, we see nothing of value that Miss Scott could contribute to a proper decision of this matter, and we certainly do not intend to retry the original case in this proceeding.

Significantly, nothing in either Miss Scott's or petitioner's affidavit pertaining to her proposed testimony relates to the claimed effects of librium on petitioner. All that she would testify to, other than matters which bear only upon Kaufman's guilt of the offense of which he was convicted, is that "petitioner was under serious emotional strain and was severely agitated prior to and during the trial." Even so, the evidence at the instant hearing clearly demonstrates, and we have so found, that such alleged emotional strain and agitation did not affect Kaufman's

ability to cooperate with and assist his counsel.

It is simply not true that petitioner's counsel received little or no cooperation in the preparation and defense of the case against him. The picture which Kaufman attempts to paint, and which we reject, is that he was listless and drowsy during the trial, so much so that it adversely affected his appearance to the jury as well as his ability to assist counsel. No corroborative evidence from any of the many other persons present at the trial was adduced at the hearing. On this vital issue there is only the self-serving testimony of Kaufman himself, which was completely lacking in specifics as to his actual appearance and the respects in which he allegedly could have but did not cooperate with and assist his experienced counsel.

Petitioner has failed to sustain his burden of proof. The motion to vacate the judgment and sentence is overruled. The foregoing memorandum constitutes our find-

ings of fact and conclusions of law.

Dated this 16th day of March, 1967.

/s/ John K. Regan United States District Judge

## IN THE UNITED STATES DISTRICT COURT-EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

No. 66C 218(3)

HAROLD KAUFMAN, PETITIONER

28.

UNITED STATES OF AMERICA, RESPONDENT

ORDER-March 27, 1967

This matter is before the Court on motion of petitioner to appeal in forma pauperis from the Order of this Court dated March 16, 1967 overruling petitioner's supplemental motion to vacate judgment and sentence, and for leave to file notice of appeal in forma pauperis.

The memorandum opinion of this Court carefully considered each of the questions of law and fact raised by petitioner's motion to vacate. We note that petitioner's affidavit in support of his motion to appeal in forma pauperis does not state the nature of the appeal nor his belief that he is entitled to redress. In short, the affidavit fails to show what merit, if any, there is in the appeal. In our judgment the appeal in this case is frivolous and wholly without merit. For such reasons, we hereby certify that the appeal is not taken in good faith. The Motion to Appeal in Forma Pauperis should be and it is hereby denied, and leave to file Notice of Appeal in Forma Pauperis is hereby denied.

Dated this 27th day of March, 1967.

/s/ John K. Regan United States District Judge

## UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

SEPTEMBER TERM, 1966

Misc. 461

Filed, May 11, 1967, Harold G. Pryce, Clerk, U. S. District Court, E. Dist. of Mo., St. Louis

HAROLD KAUFMAN, PETITIONER

vs.

UNITED STATES OF AMERICA

#### ORDER

The Court has considered a motion for leave to proceed on appeal in forma pauperis, and in connection with that motion has examined the original files of the United States District Court for the Eastern District of Missouri.

Being fully advised in the premises, it is now here ordered that the motion for leave to proceed on appeal in forma pauperis be, and it is hereby, denied.

May 11, 1967

[Certificate of Clerk Omitted in Printing]

# [A] EXCERPTS FROM THE TRIAL TRANSCRIPT IN CASE No. 64 Cr 12(3)

## IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

No. 64 Cr 12(3)

Filed, Nov. 10, 1964, Harold G. Pryce, Clerk, U. S. District Court, E. Dist. of Mo., St. Louis

UNITED STATES OF AMERICA, PLAINTIFF

vs.

## HAROLD KAUFMAN, DEFENDANT

## VOLUME I TRANSCRIPT OF TRIAL

Transcript of testimony adduced and proceedings had during the trial of the above-styled cause on August 24, 25, 26 and 27, 1964, and after-trial motion of September 18, 1964, before

# HONORABLE JOHN K. REGAN, JUDGE

presiding in Court No. 3 of the District Court of the United States, U. S. Court and Customs House, 1114 Market Street, St. Louis 1, Missouri, and a jury.

The defendant was present in person during all pro-

ceedings of the trial.

## Appearances:

Mr. William C. Martin, Assistant United States Attorney. Messrs. John Barsanti and James Singer, Attorneys for defendant.

## [1] OPENING STATEMENT IN BEHALF OF THE GOVERNMENT

MR. MARTIN: May it please the Court, gentlemen of the defense, madam and gentlemen of the jury: During the course of the Court's Instructions this morning, he mentioned the fact that counsel for both sides would have the opportunity to give you the opening statement. As counsel for the government, it is my privilege to give you the first opening statement. The gentlemen for the defense will have the opportunity to give you the opening statement on behalf of the defendant. They might give [2] you their opening statement immediately after I have concluded, or they have the privilege of waiting until all of the government's evidence is in, and then give you their opening statement.

Now, in the opening statement I will be outlining to you the evidence which the government expects to bring before you, and you have been cautioned by the Court's instructions that what I might say in the opening statement or the closing argument, or any time during the course of the trial should not be taken as evidence, but it is my version of what the evidence is going to be in the opening statement, and in the closing statement what the evidence has been. Likewise, defense counsel the same

caution applies to what they might say.

You have been informed that this is a criminal case brought by means of an indictment returned by the Grand Jury. Now, I will read to you the indictment, omitting the formal caption of the indictment, and also I will omit the formal closing of it, and just give you the body of the charge, which reads as follows:

"The Grand Jury charges:

"That on or about the 16th day of December, 1963, in St. Louis County, in the State of Missouri, within the Eastern Division of the Eastern District of Missouri, Harold Kaufman, the defendant, did, by force and vio-[3] lence, and by intimidation, take from the presence of another, to wit, Lloyd A. Woollen, Manager of the Roosevelt Federal Savings and Loan Association, certain money,

to wit, the sum of \$328.50, more or less, in lawful money of the United States, belonging to, and in the care, custody, control, management and possession of said Roosevelt Federal Savings and Loan Association, a Federal savings and loan association authorized and acting under the laws of the United States, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; that in committing the above offense, he, the said defendant, did put in jeopardy, the life of the said Lloyd A. Woollen by the use of a dangerous weapon and device."

That's the charge that has been brought by the Grand Jury, which the government will attempt to prove by the

following evidence.

We will call first as a witness Mr. Allan H. Ramsey, who is the Vice-President of the Roosevelt Federal Savings and Loan Association. He will have with him the charter of the Roosevelt Federal Savings and Loan Association, and he will also have with him and also will identify the insurance certificate issued by the Federal Savings and Loan Insurance Corporation. That charter and the insurance certificate are both in effect now, and were in effect on December 16, 1963.

[4] The next witness that the government will call will be Mr. Lloyd A. Woollen. Mr. Woollen, on December 16, 1963, was the manager of the branch office of the Roosevelt Federal Savings and Loan Association located in the River Woods shopping area out in North St. Louis County.

THE COURT: River Roads.

MR. MARTIN: River Roads. Pardon me. That on December 16, at about 4:00 o'clock, shortly after 4:00 o'clock, the defendant, Harold Kaufman, entered into the office and engaged in conversation with Mrs. Marcelle Lorenz, who will also testify as a witness. Putting the testimony of these two witnesses together our evidence will show that the defendant talked with Mrs. Lorenz first, inquired about Travelers' Checks, inquired about the giving of a personal check in payment of Travelers' Checks, and that Mrs. Lorenz indicated that she could not accept the personal check in payment of Travelers' Checks; that the defendant then talked to Mr. Lloyd A. Woollen,

who was on duty at one of the tellers' windows, the window right next to the window where Mrs. Lorenz was

working at the time.

Mr. Woollen had overheard the conversation between the defendant and Mrs. Lorenz, and the defendant then talked to Mr. Woollen. The nature of the conversation was in substance that the defendant was interested in a loan. He gave Mr. Woollen some information about him [5] that he had recently been transferred from Pittsburgh by his employer, the Western Electric Company, and that he was in the area, interested in a loan, and also there was a conversation about opening an account, and they were seated at this time at a desk in the Association office, and during the course of Mr. Woollen's taking information pertaining to the opening of a savings account, the defendant pulled a gun and announced that this was a holdup. We will have as an exhibit the pistol which the defendant was in possession of at that time.

We will bring to you testimony of witnesses who were in the savings and loan association during the course of the holdup. The defendant demanded money from Mr. Woollen, and Mr. Woollen then went to the teller's window, where he gave him, in substance, the sum of \$328.50

of the Association funds.

Now, Mr. Woollen, at the time he gave this money to the defendant, gave him what might be referred to in the testimony as bait money, and our evidence will show that previously Mr. Woollen, together with another employee, had written down serial numbers of \$50.00 of the money which was given to the defendant during the course of this robbery.

Our evidence will show that subsequently this same money delivered by Mr. Woollen to the defendant was

recovered from the possession of the defendant.

[6] Not only did the defendant demand money, but he also asked for Travelers' Checks and we will have as an exhibit two folders containing Travelers' Checks, together with other documents from the Roosevelt Federal Savings and Loan Association, which were delivered over to the defendant.

Mr. Woolleh will testify further that after the robbery he made an inventory of the cash drawer from which he took the money and delivered to the defendant, and there

was missing from the cash drawer \$328.50.

His testimony will be further that he subsequently checked the records of the Association, and he was able to determine the serial numbers of the Travelers' Checks that were missing, and that there was a total of approximately \$11,520 worth of Travelers' Checks which had been delivered over to the defendant.

Our evidence will show that subsequent to the defendant's apprehension he was found in possession of these two folders of Travelers' Checks in the amount of approxi-

mately \$11,520.

Now, during the course of the holdup some customers came into the Association office, and we will have one customer, Mr. John Dedert, as a witness, and he will testify that he, his wife, and family of three children entered the Association offices during the course of the holdup; that he and some other customers were directed [7] to the back room, where they went to, a back office; that they were directed to go there by the defendant. They remained in this office for a few minutes, and the defendant then directed them to go into the back room, or supply room of the Association office, and that they remained there until the defendant left.

The evidence will show that after the defendant left the Roosevelt Federal Savings and Loan Association in North St. Louis County, he proceeded directly to Alton, Illinois, and that when he crossed the bridge at Alton, Illinois, there was a car, if you will, of the Alton Police Department, occupied by a man by the name of Stahl. Corporal Stahl's testimony will be that he received a message from his dispatcher to look out for a hit and run driver that was driving a 1954 red Rambler bearing New York license plates 1963 8Z6367; that he was in the vicinity of the Lewis & Clark Bridge as you enter into Alton, Illinois, from across the river, and that he saw this automobile come across the bridge, and that he immediately started to follow the automobile. This automobile traveled some distance and made a turn, at which

place it went out of control, hit a tree, and was unable to

proceed. farther.

Corporal Stahl then approached the defendant, conversed with him about the accident, and subsequently placed him under arrest because of the accident at that time.

[8] A tow truck was called, and we will have as a witness a gentleman by the name of Clifford Martin, who operates Cliff's Towing Service in Alton, Illinois. Mr. Cliff Martin towed the wrecked automobile away from the scene of the accident to his garage, and after he arrived at the garage he discovered in the automobile on the back seat a .38 caliber revolver, and our evidence will show that this revolver was a Smith & Wesson, Serial number 287393, I believe the number to be.

The defendant was taken to the police station by Corporal Stahl, where he was searched by a Sergeant by the name of Light, and Sgt. Light will appear and testify as a witness.

On duty at the time at the Alton Police Station was Captain Petersen, and Captain Petersen will also appear and testify. Sgt. Light will give his testimony as to the items found in the possession of the defendant at the time of his arrest and search there in the police station, and Captain Petersen will have the records of the Police Department as to the items recovered from the defendant at that time.

Further, our evidence will show that an investigation of the automobile subsequent to the accident disclosed a number of articles which we will have before you and introduce into evidence, and during the course of the [9] search of the automobile and the course of the search of the defendant, the \$328.50, which he had taken from the Roosevelt Federal Savings and Loan Association, were found, the pistol was found, the folders containing \$11,520 worth of Travelers' Checks were found, along with a number of other personal items.

Our evidence further will show that the defendant is from New York City, and that prior to leaving New York City he had conceived the idea of coming to St. Louis for

the purpose of committing a robbery.

Our evidence will show that among the items recovered from the possession of the defendant and in the automobile was a rental contract from an automobile agency located in New York City; that this agency had on or about, I believe the date to be December 13 or 14, rented

to Arthur Cooper this particular automobile.

Our evidence will show that the defendant, after arriving in Alton, Illinois, from New York City on December 16, he stopped at Wittel's Gun Shop in Alton, Illinois, and that approximately 1:55 P.M. on December 16 he purchased this particular gun from Wittel's Gun Shop in Alton, Illinois, and we will have the records of the gun shop which shows a sale of the pistol to the defendant, at which time he used the name of Arthur Cooper in purchasing the pistol. We will have the gentleman, Mr. John [10] Davis, from the gun shop in Alton, Illinois, who talked with the defendant, made the sale, will identify the records of the gun shop, together with the pistol which was sold to the defendant at 1:55 P.M. on December 16th. And Mr. Woollen's testimony will be that approximately 4:05 that same date the defendant entered the Roosevelt Federal Savings and Loan Association and proceeded to commit the robbery.

Furthermore, we will show to you that the defendant, in planning the perpetration of this particular robbery, came over from Alton, Illinois, he went to the River Roads Shopping Center and looked at the Roosevelt Savings and Loan Association. He went to the Northland Shopping Center, and looked at the Federal Savings and Loan Association there, and determined that the Roosevelt would

be the easier one to rob.

Now, ladies and gentlemen, some of this evidence will be contained in a statement which was subsequently signed

by the defendant.

MR. BARSANTI: Your Honor, if I might object at this point, any reference to the statement Mr. Martin is about to make, we will move to exclude that when the time comes, and I will object to any reference to it at this time.

THE COURT: Come up a minute.

(Thereupon, a colloquy ensued among the Court and counsel, out of the hearing of the jury, and off the record.)

THE COURT: I will sustain the objection at this

[11] time.

MR. MARTIN: Now, I have not attempted to give you each and every bit of evidence which the government will bring before you, but we will bring before you evidence to prove each element contained in the charge in the indictment. I have merely attempted to give you a general outline of what we anticipate our evidence to be. You will hear the evidence, and I will not take any more of your time. I will not try to go any more into detail, but thank you for your attention so far.

MR. BARSANTI: Your Honor, with your leave, we

will make our statement now.

THE COURT: All right.

#### OPENING STATEMENT IN BEHALF OF THE DEFENDANT

MR. BARSANTI: If the Court please, Mr. Martin, Mrs. Goodhead, gentlemen of the jury: You have heard the statement of Mr. Martin on behalf of the government as to what they intend to prove to you today. In the course of this trial, the evidence for the defendant, Harold Kaufman, will be that on December 16, 1963, the man was mentally ill, mentally sick, to the point that he was not able to control his actions, whether they be right or wrong. Any actions taken were not those of a rational man, were not those of a sane man. The evidence which the government will present will show that a physical body bodied [12] in the body of Harold Kaufman entered the Roosevelt Federal Savings and Loan Association, that had a gun, and removed from that institution property as described to you, checks and cash. But the government in its evidence to you will not be able to prove beyond a reasonable doubt that that was a sane man that performed those actions.

Our evidence will show that this approximately 40-year old man has been mentally sick for many years, of dif-

ferent severity at different times, probably existing from childhood. He will be diagnosed for you as suffering from a schizophrenic reaction, paranoid type. Our evidence will show to you that this is a man who when subjected to pressures, whether they be real or imaginary, when experiencing frustrations, whether real or imaginary, the normal human mechanism, the normal mental mechanism is not there which each of you have to keep yourself under control.

Our evidence will show that when such an ailment exists, pressures and frustrations, which will be brought forth to you in the evidence that were affecting this man, can bring him to the point where there is no mind, no

independent will, no way to control the action.

Now, all of us are experienced in seeing this happen on a very temporary basis. Even normal people have momentary fits of anger where they lose their control, but you all have the normal mind, the normal human mecha-[13] nisms which immediately bring you back, which restore you.

The evidence will show that the sickness which Mr. Kaufman has destroys these normal mechanisms. The ability to restore and regain normalcy is not possible. To return to realism is almost impossible. We will show you that in Harold Kaufman these normal mechanisms are not there.

Our evidence will show that on December 16, 1963, because of the mental illness, Harold Kaufman was out of touch with what we know as reality. He was sick and unable to control his actions.

Now, our evidence will be presented to you through several lay witnesses and several psychiatrists. One of the lay witnesses will be a detective from the New York Police Department, which is where Mr. Kaufman lived when he was not in an institution, not in jail or some place, He will be introduced to you through a woman with whom he had close contact during the months preceding December 16, 1963, a woman who is presently serving a term in prison in the State of New York for burglary, a woman who had three illegitimate children, two of them by, I believe, by a Negro father, one by a white father.

The psychiatrist who will be here will be one who employed Harold Kaufman some time prior to December 16, 1963, actually several years, at a time when his condition was still on the neurotic borderline side of sanity and

[14] had not crossed into the psychotic level.

The other psychiatrists will be psychiatrists who were employed by the United States Government, who examined Mr. Kaufman after the event. The testimony that will be presented through these doctors will show the logical and unfortunately natural sequence and breakdown of Mr. Kaufman's mental capacity and ability. This testimony will connect up the pressures, frustrations, anxieties, the nervousness which will be shown to you in the months preceding this event, to show that on December 16 there was no mental capacity; that this man was legally insane.

Now, the evidence will also show that this is not a matter of suddenly going berserk, in the picture that many see of someone climbing a wall. It is not something that is necessarily turned on, and although it might be, some people are restored to control. Some people never

are restored to control.

The evidence will not show that Harold Kaufman to-day is a normal human being. It will show that he has been brought back to some closer touch to reality. It will not show that he is a well man, but the evidence as a whole will show, without a doubt, that he was a sick man, certainly to the point that it will be impossible for the government to prove beyond a reasonable doubt that he was sane on December 16th. Thank you.

## [23] LLOYD WOOLLEN,

being first duly sworn, testified in behalf of the government as follows:

#### DIRECT EXAMINATION

#### BY MR. MARTIN:

Q Will you state your name, please, sir? A Lloyd Woollen.

THE COURT: Spell that last name.

THE WITNESS: W-o-o-l-l-e-n.

Q (By Mr. Martin) What is you business or occupation, Mr. Woollen?

A I am River Roads Branch Manager of the Roosevelt

Federal Savings and Loan Association.

Q Calling your attention to the date of December 16, 1963, were you working for the Roosevelt Federal Savings and Loan Association on that date?

A Yes, sir.

Q At what office, sir?

A River Roads.

Q Will you tell us where that is located?

[24] A It is located at 104 River Roads Center, Jennings, Missouri.

Q Thank you, sir. Was there anyone else working on

that date?

A Yes, sir.

Q Who else?

A Mrs. Marcelle Lorenz.

Q Have you ever seen the defendant, Harold Kaufman, before?

A Yes, sir.

Q Do you see him in the courtroom today, sir?

A Yes, sir.

Q Will you point him out to us, please, sir?

A Yes, sir; the man right there (indicating).

THE COURT: Where?

THE WITNESS: The third man from me. THE COURT: Which side of counsel table?

THE WITNESS: My left.

THE COURT: All right.

MR. MARTIN: If the Court please, may the record show the witness is indicating the defendant?

THE COURT: The record will so show.

Q (By Mr. Martin) Did you see him on December 16 of 1963?

[25] A Yes, sir.

Q About what time, sir?

A Approximately 4:00 o'clock.

Q And where did you see him?

A. In our office at River Roads.

Q Did you see him when he entered?

A Yes, sir.

Q Was anyone with him?

A No, sir.

Q Was anyone in the office, other than you and Mrs. Lorenz?

D.

A No.

Q What was the first thing that Mr. Kaufman did after he came into the Association office?

A He approached Mrs. Lorenz inquiring about purchasing Travelers' Checks.

[26] Q (By Mr. Martin) Now, did you talk to the defendant on that date, sir?
[27] A Yes, sir.

Q About how long did you talk to him?

A Nearly ten minutes; eight to ten minutes.

Q Now, will you tell us what was the conversation that you had with the defendant during that period of time?

A I talked with him concerning a G.I. loan, a Veterans Administration loan.

Q What, if anything, did he say about a G.I. loan? MR. BARSANTI: I object, Your Honor, as being leading and immaterial to any matter before the Court.

THE COURT: It will be overruled.
MR. MARTIN: You may answer, sir.

THE WITNESS: I inquired whether he could even get a G.I. loan or not in this vicinity. He told me that he was being transferred to St. Louis from out of town, and we spoke about general information concerning a G.I. loan. He told me that he had a certificate of eligibility, which is necessary for the obtaining of a G.I. loan. He told me he had this, and we spoke just general information about a G.I. loan.

Q Did he give you the name of his alleged employer?

A Yes, sir.

Q. What name did he give you as his employer?

A Western Electric.

Q Did he tell you from where he had been transferred?

[28] A Yes, sir. I believe it was Indianapolis.

Q Now, sir, did you have any additional conversation

pertaining to the opening of a savings account?

A Yes. After we talked about the G.I. loan for several minutes, he informed me that since he was new in town, of course he eventually wanted to open banking connections, and he said, "While I am here, let's just open a savings account," so we proceeded to do that.

Q Now, sir, when you first talked to him, where was

that conversation?

A Concerning the savings account?

Q Concerning the loan.

A The loan was at the vicinity of Teller Window 1.

Q When you talked to him about the savings account, where was that conversation?

A When he first had mentioned that he of course wanted to open a savings account, it was in the same vicinity. As soon as he mentioned that he wished to open a savings account, we sat down at the New Accounts desk, which is approximately five or six feet from there.

Q Did you know where Mr. Lorenz was at that time,

sir?

A As far as I can remember, she was still within her vicinity of Teller Window 2.

Q Did you proceed to go through the formality of ask-

[29] ing questions about the savings account?

A Yes, sir.

Q Now, sir, during the course of that conversation about opening the savings account, what, if anything, did the defendant do?

A Well, of course, the first thing I asked him was his name and address here in the city. He gave this to me, and while doing this he had laid a five dollar bill on the counter. Nothing was indicated that this was to be the amount of the account. He just had laid it there, I assumed in preparation for the opening of the account.

Q Now, sir, up to that time had you had the oppor-

tunity to observe the manner of the defendant?

A Yes, sir.

Q Will you describe that for us, sir?

A Describe how I happened to observe him?

Q What did you observe?

A What did I observe?

Q Yes, sir.

A Well, of course, the time I was talking to him about a loan was eight to ten minutes, and we were within probably four feet of each other at that time, and, of course, I observed his appearance, his hat, his dress, and so forth.

[31] Q Now, sir, what happened while you were talk-

ing to him about opening the savings account?

A Well, he gave me a name and an address, and I proceeded to seek from him his Social Security number, and after he gave me some numbers, he sort of hesitated as to the last four numbers, acted as if he couldn't remember, or something of that nature, and I indicated to him that it was a new law that we do have to at least attempt to obtain a Social Security number and at that point he proceeded to pull the gun on me.

(Thereupon, a list of serial numbers of bills was marked by the reporter as Government's Exhibit No. 3 for the purpose of identification.

A list of Travelers' Checks was marked as Government's Exhibit No. 4 for the purpose of identification.

An expansion envelope containing Travelers' Checks was marked as Government's Exhibit No. 5-A for the purpose of identification.

An expansion envelope containing Travelers' Checks was marked as Government's Exhibit-No. 5-B for the purpose of identification.

- [32] A revolver was marked as Government's Exhibit No. 6 for the purpose of identification.)
- Q (By Mr. Martin) Now, Mr. Woollen, I think you said that the defendant pulled a gun out?

A Yes, sir.

Q Were you able to see the gun?-

A Yes, sir.

Q Now, sir, I will show you a Smith & Weston revolver—that is Wesson, not Weston—marked Government's Exhibit No. 6, bearing Serial Number 287393. Will you look at that, please, sir, Mr. Woollen?

A This appears to be a gun similar, if not like the

same one he showed me.

MR. MARTIN: I don't know if the gentleman sitting over there in the last chair heard you or not, sir. Will you repeat that answer?

A I said it is a gun that appears similar, if not just

exactly like the one he pulled on me.

Q What, if anything, did the defendant say at the time he pulled a gun that appears to be similar to Government's Exhibit No. 6?

A What did he say when he pulled the gun?

Q Yes, sir.

A He said, "This is a stick-up," to me. He said, [33] "This is a stick-up."

Q And what, if anything, did you do at that time?

A At that time, I was seated at the desk, and I pushed my chair back somewhat a few inches from the desk to show that I was not doing anything to touch an alarm or anything of that nature, to him.

Q After you did that, did he say anything else to you,

sir?

A He said something else, before he said anything else to me, again to Mrs. Lorenz.

Q What, if anything, did he say to Mrs. Lorenz?

A He said, "Lady, don't touch anything or I'll blow your head off," or something of that nature.

Q Now, sir, was the gun pointed at you?

A No, sir, he didn't point the gun at me. The counter top is ordinary desk level. He pulled the gun out, and he showed me the gun. He had it above the counter but it wasn't exactly pointing at me. He showed me the gun, saying, "This is a stick-up".

Q Now, sir, at that time was the defendant's hand

shaking or was it steady?

A I didn't see if it was shaking; no, sir.

Q Now, what was the next thing you did, sir?

A The next thing he said to me was, "Give me your [34] cash and all your Travelers' Checks."

Q Did you give him any cash, sir?

A Yes, sir, I did.

Q Did you give him any Travelers' Checks, sir?

A Yes, sir.

Q And after you gave him the cash and Travelers'

Checks, what, if anything, did he do or say?

A Well, I put the cash and Travelers' Checks on Counter Window No. 1. He took them from the counter and stuffed them into an overcoat pocket, an overcoat which he had on. I should say he stuck the cash in the pockets. The Travelers' Checks were in large packets, and those he just put under his arm, or held them in some such nature.

Q Now, sir, did anyone else enter the office of the Roosevelt Federal Savings and Loan Association while these events were occurring?

A Yes, sir.

Q Do you know who else entered?

A There was a lady. A lady first entered. I don't know her by name. I can't give you her name. A Mr. and Mrs. Dedert entered later with their three children.

Q What happened after Mr. and Mrs. Dedert entered

with their three children?

A At that time, he ordered them back into my office, [35] which is in the rear of the office, office proper, and had them sit down into my office. He later on moved them from that office into a storage area.

[36] Q And what, if anything, did the defendant say

during that period of time?

A At that time he ushered them back into my office, and then he came back out of the office, and that is when he stuffed the cash into his pockets, and then at that time he went back to my office again and told them to come out of my office, and ushered them then back into the storage area.

Q Where is the storage area located?

A That is located at the rear of the teller section, at the back portion of the office, completely in the back.

Q Did you hear the defendant say anything about the

children?

A Yes. He mentioned at least two times that I can recall, he said something to this effect: "Everybody do as [37] I tell you. I don't want to have to hurt the kids. I don't want to hurt the children."

Q Mr. Woollen, you subsequently made an inventory of the cash drawer from which you took the cash which you gave the defendant?

A Yes, sir.

Q You made that inventory yourself?

A Yes, sir.

Q Were you able to determine how much cash was missing from the drawer?

A Yes, sir.

Q Will you tell us how much was missing?

A Three hundred twenty-eight dollars and fifty cents. [38] Q Sir, did you subsequently examine the records of the Roosevelt Federal Savings and Loan Association, the River Roads Branch, pertaining to Travelers' Checks that you had on hand?

A Yes, sir.

Q Were you able to determine how much Travelers' Checks had been missing?

A Yes, sir.

Q Will you tell us the total amount that you recall?

A The total amount dollar-wise, \$11,520.

Q Now, sir, I will give you a list, which is Exhibit No. 4, and ask you if you recognize that list?

A Yes, sir.

Q Will you tell us what that is?

A This is a list that I compiled from the Association's records determining the account numbers, the amount of the checks denomination-wise, and the total dollar amount.

THE COURT: Talk a little louder, will you, please?

This is of the Travelers' Checks; is that right?

THE WITNESS: Yes, sir.

(By Mr. Martin) And, sir, I believe you said this is a list of the Travelers' Checks that were missing after the defendant left?

A Yes, sir.

[39] Q Now, sir, I will show you two folders containing Travelers' Checks. These two folders containing Travelers' Checks are marked Government's Exhibits 5-A and 5-B. Will you examine those, please, Mr. Woollen?

Shall I open them.

Q Yes, sir. Now, sir, will you tell us what you find in those two folders?

A These are the two packets by which we maintained our supply of Travelers' Checks at the River Roads Branch.

Q What company issues those Travelers' Checks?

American Express.

And do you see any other documents in those two folders?

A Yes. I see a booklet in the folder by which we maintain a balance of how many Travelers' Checks we still have on hand in the Association.

Q Now, those Travelers' Checks are in sort of book

form, or how are they?

A Yes, sir.

And they have serial numbers on them?

A Yes, sir.

Q. And, sir, those serial numbers are the ones listed on this Exhibit No. 4?

A Yes, sir.

[40] Q And do you recognize the Exhibit 5-A and 5-B as being the two folders that you gave to Mr. Kaufman on December 16, 1963?

A Yes, sir.

Q Sir, I will show you a list which is marked as Government's Exhibit No. 3. Will you tell us what that is, sir?

A This is a list showing a recording of certain serial numbers on one dollar bills which we had placed into Drawer No. 2 at the River Roads Shopping Center.

Q What is the date of that list, sir?

A July 19, 1962.

Q' And that list contained serial numbers of what denomination of bills?

A One dollar bills.

Q That is United States currency?

A Yes, sir.

Q Will you tell us who made up that list, sir?

A This list was made up by myself and Adele Frederick.

Q Does it bear your signature?

A Yes, sir.

Q Now, sir, after you wrote the list of serial numbers that appear there, what, if anything, did you do with the bills bearing those serial numbers?

[41] A I verified that the list was made correctly by taking each bill in turn and checking it directly against the numbers that are recorded on this paper here.

Q And after you had completed that procedure, what,

if anything, did you do with the bundle of bills?

A The bills were then bundled with a rubber band and placed in the drawer.

Q And when you say "in the drawer," would that be in the cash drawer of Window No. 1?

A Yes, sir.

Q And that is the drawer from which you took the cash which you gave to Mr. Kaufman on December 16, 1963?

A Yes, sir.

Q Now, sir, did I ask you the amount of money or bills represented by that list of serial numbers?

A Fifty dollars.

Q And all one dollar bills?

A Yes, sir.

Q What, if anything, did you do with those fifty one-dollar bills, the serial numbers of which are listed on that list?

A These were contained in the money that I gave to the defendant.

MR. MARTIN: Thank you, sir.

[42] THE COURT: You made up that list. When did you make it up?

THE WITNESS: July 19, 1962.

THE COURT: Did you keep putting that money back every day or how did you happen to have that same money?

THE WITNESS: This stays in each drawer.

THE COURT: What?

THE WITNESS: This stays in the drawer. It never is taken out.

THE COURT: I see.

Q (By Mr. Martin) Sir, from December 19, 1962, the date that you made up the list,—I mean from, did I say—I mean from July 19, 1962, until December 16 of 1963, the bills represented by the serial numbers on this list were contained and remained in drawer No. 1.

A Drawer No. 2 at Window No. 1.

MR. MARTIN: Oh, pardon me, sir. If the Court please, I'd like to offer into evidence Exhibits 3, 4, 5-A and 5-B.

MR. BARSANTI: 3, 4, 5-A and 5-B? Is that correct? THE COURT: What about 6? It hasn't been identified.

MR. MARTIN: I am not offering 6 as of this time, Your Honor.

THE COURT: All right. They will be received.
[43] MR. BARSANTI: No objection, Your Honor.

(Whereupon, Government's Exhibits Nos. 3, 4, 5-A and 5-B were received in evidence.)

# [45] MARCELLE LORENZ,

being first duly sworn, testified in behalf of the government as follows:

#### DIRECT EXAMINATION

Q (By Mr. Martin) What is your business or occupation, Mrs. Lorenz?

A Assistant Manager for Roosevelt Federal Savings and Loan.

THE COURT: Talk a little louder, please.

THE WITNESS: Assistant Manager for Roosevelt Federal.

[46] Q (By Mr. Martin) At which branch?

A River Roads.

Q That is the one in Jennings, Missouri?

A That's right.

Q Were you working at that office, branch office in Jennings, the Roosevelt Federal Savings and Loan Association, on December 16, 1963?

A I was.

Q On that date, did you see Mr. Harold Kaufman, the defendant in this case?

A I did.

Q Do you see him in the courtroom?

A Yes, sir.

Q Will you point him out to us, please, ma'am?

A Right to your right.

Q That would be this third gentleman on the right-hand side of the table?

A Yes, sir.

[48] Q Now, did you see Mr. Woollen giving to the defendant any money?

A Yes.

Q Immediately prior to Mr. Woollen's giving to the defendant any money, did the defendant say anything to you?

A Yes. He warned me not to press any buzzer or anything, or alarm, rather, or he'd blow my head off. That was his words.

## [50] JOHN DEDERT,

being first duly sworn, testified in behalf of the government as follows:

#### DIRECT EXAMINATION

[51] Q Now, sir, calling your attenion to the date of December 16, 1963, did you have occasion to be in the office of the Roosevelt Federal Savings and Loan Association at River Roads Branch?

A I was.

Q At that time, sir, was there anyone with you?

A My wife and three kids.

Q At that time, sir, did you see Mr. Harold Kaufman, the defendant in this case?

A I did.

Q And do you see him in the courtroom today, sir?

A I do.

Q Will you point him out to me, sir?

A The man sitting on the far side.

Q That would be the third gentlemen?

A The third gentleman down.

MR. MARTIN: If the Court please, may the record show the witness is indicating the defendant?

THE COURT: The record will so show.

Q (By Mr. Martin) Where was Mr. Kaufman when you first saw him, sir?

A He was scooping money into one hand, and sticking the money in his pocket with the other hand. He was in the bank.

[53]

#### JOHN E. DAVIS,

being first duly sworn, testified in behalf of the government as follows:

#### DIRECT EXAMINATION

#### BY MR. MARTIN:

(Thereupon, a card was marked by the reporter as Government's Exhibit No. 7 for the purpose of identification.)

Will you state your name, please, sir?

John E. Davis.

What is your business or occupation, Mr. Davis? [54]

Manager of Wittel's Gun Shop, Alton, Illinois. Were you employed at Wittel's Gun Shop on December 16, 1963?

Yes, sir. A

Will you give us the address of that gun shop?

A 204 State.

Q That is Alton, Illinois?

Yes, sir.

Now, sir, on that date, did you see the defendant, Mr. Harold Kaufman?

A Yes, I did.

Do you see him in the courtroom, sir?

Yes. A

Will you point him out to us, please, sir? The third fellow on this end, on my right.

MR. MARTIN: If the Court please, may the record show the witness is indicating the defendant?

THE COURT: It will so show.

Q (By Mr. Martin) Did you have a conversation with him, sir?

A Yes, I did.

'Q Was there anyone else present at the time you had a conversation with him on that date?

A Not that I recall; no. They was in and out of the [55] shop, but I wouldn't know exactly who it would be.

And what was that conversation about?

Mr. Kaufman come in, which was known as Cooper at the time, and wanted to buy a target pistol. Well, we didn't have a target pistol at the time, so he decided to buy a .38, that is a S&W Victory Model. Finally, he decided on that, said he'd have to make a phone call before he'd buy the pistol. I said, "Well, if it's anything pertaining to your wife about buying the pistol, you are welcome to use our phones."

"No," he said, "It would have to be private." So he was gone, and maybe thirty-five or forty minutes later

he come back and bought the pistol.

Q Now, sir, did he tell you the purpose of buying that pistol?

A He said he wanted to buy it for his son up in

Chanute Field for a Christmas present.

Q Sir, about how long did you talk to Mr. Kaufman when he was in the store the first time?

A Oh, I imagine twenty, tweny-five minutes. I'll say

less than a half an hour.

Q And were you able to observe whether or not his conversation was coherent?

A He talked very normal.

[56] Q And were you able to observe his nervous condition at that time, sir?

A No, I couldn't.

Q Did he appear to you to be nervous, or not to by nervous?

A Well, he appeared to me not to be nervous

Q Were you able to observe whether or not he appeared to be agitated?

A No.

Q. You weren't able to observe, or he was not?

A Well, I couldn't—No, I don't know if he—Will you state your question again?

THE COURT: Would you state whether or not he

appeared to be agitated.

THE WITNESS: No, he didn't seem that way to me.

Q (By Mr. Martin) Now, sir, did you sell him a pistol?

A Yes, I did.

Q I will show you Government's Exhibit 6, which is a Smith & Wesson revolver, Serial Number 287393, and ask you whether of not you recognize it, sir?

A This is the pistol. This is the one.

Q That is the one that you sold to Mr. Kaufman?

A Yes.

Q. At that time, you knew him as Arthur Coleman—[57] Cooper?

### [61] CHARLES B. STAHL,

being duly sworn testified in behalf of the government as follows:

#### DIRECT EXAMINATION

#### BY MR. MARTIN:

Q State your name, please, sir?

A Charles B. Stahl.

Q And what is your business or occupation, Mr. Stahl?

A Police officer, Alton Police Department.

Q And what is your rank?

A Corporal.

Q In the Alton Police Department?

A Corporal.

Q Sir, were you so employed on December 16, 1963?

A I was.

Q Were you on duty that day?

A I was.

Q Calling your attention to about 4:40 P.M. on December 16, 1963, did you receive a message from your dispatcher?

A I did.

Q What was that message, sir?

A To proceed to the bridge entrance and stand by to

# Pages 62 through 71 inadvertently omitted in page numbering.

[72] watch for an automobile coming, possibly coming across the bridge from the Missouri side, that had been involved in a hit-and-run accident.

Q. What description did you have of that automobile?

A '63 red Rambler.

Q What license plates?

A New York-license.

Q And do you recall the number of the license plates?

A I have it in my notes.

Q Will you tell us what the license plate number was?

A \*8Z6367.

Q And, sir, did you subsequently see a red Rambler bearing a New York license plate 8Z6367 come across the bridge, or in Alton, Illinois?

· A I did.

Q Do you recall about what time you saw that automobile?

A Around 4:40 P.M.

Q Did you follow the car?

I did; yes, sir.

Q Did you signal for the automobile to stop, or attempt to stop it?

A I did.

·Q Will you tell us what happened when you did signal for the automobile to stop?

[73] A I rushed, turned a red light on the cruiser, honked the horn, and motioned for the man to pull over to the curb. He immediately made a right turn attempting to go up a hill on George Street off of Third, and when he did, he slipped on the ice, went up over the curb, drove up over the sidewalk until he hit a tree, killed the engine of his automobile, and the car rolled back across the street.

Q Did you subsequently see the driver of that automobile?

A Sir?

Did you see the driver of that automobile? Q

Yes, sir. A

Q Did you determine who the driver was?

At the time I did not know him: no, sir. A

Did you subsequently learn who he was? Q

Yes, sir. A

And who was the driver of that automobile? Q

Harold Kaufman.

At the time that you first talked to the driver of the automobile, what, if anything, did he give you at that time?

A He gave me a name of Taylor. I have it here, (referring to notes), Donald Harry Taylor.

Now, sir, do you see the driver of that automobile [74] in the courtroom?

Yes, sir.

Q Will you point him out to us, please, sir?

A The gentleman there (indicating).

MR. MARTIN: If the Court please, may the record show the witness has indicated the defendant, Harold Kaufman?

THE COURT: The record will so show.

Q (By Mr. Martin) Immediately after the accident, did you have any conversation with the driver of that

automobile, Harold Kaufman?

A We talked on the street. I arrested him for traffic violation at the time, and we talked on the street, or in the police cruiser, and I asked him what was the matter. He had had an accident in Missouri, and now he had one in Illinois, and what was the matter, and had he been drinking, and he said yes, he was drunk. And I told the man he had driven his car then as far as I could allow him to drive it at that time, because he had already been involved in two accidents, and I placed him under arrest for traffic violation and called for a wrecker to tow his automobile.

Q Now, sir, were you close enough to Mr. Kaufman at the time you were having that conversation to determine whether or not there was an odor of alcohol on him?

A He didn't appear to have been intoxicated to me. [75] Q He did not appear to have been intoxicated?

A No, sir.

<sup>8</sup>Q Did you subsequently take him to the Alton Police Station?

A Yes, sir.

Q After you arrived at the Alton Police Station, did you have a conversation with him there?

A I did.

MR. BARSANTI: If the Court please, before any further questions along this line, I will object to any further conversation, testimony about conversation with the defendant at this time.

THE COURT: Unless we have a voir dire hearing, I

will sustain the present objection.

Q (By Mr. Martin) Now, sir, at the time you took him to the Alton Police Station and had the conversation with him, who, if anyone, was present?

A Sgt. Light and Capt., Petersen were there. Lt.

Schmidt was also present.

Q Do you recall approximately what time that was? A About, I would say about that time it was about 4:45. At the time of my arrest it was 4:40, on the street. When I stopped him and arrested him on the street, it was 4:40 then. Approximately 4:45.

[76] Q Now, sir, did you learn of the existence of agun in the automobile which had been in the accident?

A Sir?

Q Did you learn of the existence of a gun in the automobile?

A I did; yes, sir.

Q Who, if anyone, told you about that?

A Cliff Martin.

MR. BARSANTI: I will object who told the officer about something.

THE COURT: I think that would be hearsay, Mr.

Martin.

Q (By Mr. Martin) Did you have a conversation with Mr. Kaufman at the time about a gun in the automobile?

MR. BARSANTI: I will object to any such conversations with Mr. Kaufman, anything Mr. Kaufman may have said, without some foundation.

THE COURT: The question was did he have a conversation about it. I think he can answer that without

answering what Mr. Kaufman said.

MR. BARSANTI: Well, Your Honor, if the discussion relates to subject matter there, it has to be assumed there

was some discussion by both parties.

THE COURT: If you are going into this, Mr. Barsanti, we might as well excuse the jury and go into it, [77] or just abandon it, one or the other. I don't care what you do.

MR. MARTIN: If the Court wants to excuse the jury, I can give the Court the reasons why I think it is ad-

missible.

THE COURT: All right. The Jury will step out, please. Court will remain in session.

(Thereupon, the jury left the courtroom, and the further following proceedings were had out of the hearing of the jury:)

MR. MARTIN: If the Court please, up to this point it is the government's position we have laid the foundation for the conversation between this officer and Mr. Kaufman. We have fixed the place, time, those who were present at the time of the conversation, and that this conversation was about the gun which was in the car, which gun is now, has been introduced in evidence, will be identified by this officer, so that any conversation which the defendant had with him would be admissible in evidence at this time.

THE COURT: I am well aware of what is necessary to establish the groundwork for the admission of a confession; however, in this case, or any statements that this man would have made, you have got a different situation, and you also have the last case that was handed down by the Supreme Court of the United States. And over and above that, in this particular case, of course I don't un-[78] derstand particularly why they are resisting this, since by his opening statement he's admitted that the defendant has committed this crime. I think that he and the defendant both are bound by that judicial statement.

MR. BARSANTI: That's correct.

THE COURT: The only question that is really to be decided by this jury is whether he was insane at the time and didn't know what he was doing. After they determine that, why then they will either determine that he is

guilty or not guilty by reason of insanity.

MR. MARTIN: If the Court please, I think any and all statements and conversations that this defendant had on the date of the commission of the crime, which is December 16, 1963, would be material upon that question. That is, not only upon the question of the guilt or innocence of the commission of the crime, but also upon the question of his sanity.

THE COURT: Well, until such time as that issue is before the Court, why then I think that the objection is well founded, and if you want to bring the people back

in rebuttal, that is up to you, and I think you are going to have to bring them back to testify, but I don't think you can have him testify about it now, in view of the fact, first of all, while this is going to be an issue in the [79] case, it is not presently one, and you can't anticipate. I assume it is going to be made, first of all, made a statement without being advised of his rights, without having counsel, among other things, and what is it, the Jackson, is that the last one? It came down June 22.

MR. MARTIN: Well, the Escabido case, well, that case is inapropos completely in this situation, if the Court please, because in that instance the factual situation is

one-

THE COURT: I am aware of the situation. He had a lawyer and they wouldn't permit him to talk to him, but I think that we are going pretty far abroad in this. I think that once they put in issue his mental capacity, then these people can testify as to these other things on the grounds to show a mental capacity, but you don't need them now, and I don't see the reason for cluttering up this record with the possibility of an error.

MR. MARTIN: Well, if the Court please, the nature of the conversation at this time was that the defendant was the first one that informed the officer that he did have a gun. No, we can omit that and I will bring him back

for rebuttal.

THE COURT: I see no reason to bring it in now. First of all, the gun has been identified as sold to the [80] defendant. Now, I don't know who recovered the gun from this man. Who recovered the gun from the car?

THE WITNESS: Cliff Martin.

THE COURT: Is he going to testify here?

MR. MARTIN: Cliff Martin recovered the gun in the presence of this officer.

THE COURT: Which officer?
MR. MARTIN: Cpl. Stahl.

THE COURT: You saw somebody take the gun out of the car?

THE WITNESS: Martin is the one I saw take the gun from the car.

THE COURT: That is all you have got to do is have him testify that he saw the gun taken out of the automobile. You got him buying the gun. Now you got it in his automobile at the time of his arrest. That straightens that part of it. Now, what else do you need out of the confession?

MR. MARTIN: All right, Your Honor. We will pro-

ceed that way.

THE COURT: Get the jury.

(Thereupon, the trial was resumed within the hearing of the jury as follows:)

THE COURT: Proceed.

MR. MARTIN: Thank you, Your Honor.

[81] Q (By Mr. Martin) Cpl. Stahl, I will show you a .38 Smith & Wesson revolver, Serial Number 287393, marked as Government's Exhibit No. 6, and ask you, sir, if you have seen that gun before?

A Yes, sir.

Q When was the first time you saw that gun?

A At Martin's Towing Service.

Q On what date, sir?

A On the 16th of December, 1963.

Q Where was the gun at the time you first saw it?

A In the back seat of the car.

Q When you say "the car", you are referring to the 1964 red Rambler bearing New York license plate 8Z6367?

A That's right.

Q. Now, sir, at the time you first saw that gun in that particular automobile, was it loaded or unloaded?

A It was loaded.

Q Fully loaded?

A Yes, sir.

Q Who, if anyone else, was present, sir?

A. Cliff Martin.

Q And what, if anything, did you do with the gun at that time?

A We removed it from the car.

[82] Q And after removing it from the car, what, if anything, did you do?

A Wrapped it in a towel, and we placed it in Mr. Martin's desk until the Federal agents arrived.

Q Was the gun subsequently tuned over to the Federal

agents?

A It was; yes, sir.

MR. MARTIN: No further questions, Your Honor. THE COURT: All right. Just a minute, Corporal. MR. BARSANTI: Just a minute, Your Honor.

#### CROSS-EXAMINATION

#### BY MR. BARSANTI:

Q Cpl. Stahl, what time did you get the message from your dispatcher to be on the lookout for a certain automobile on the 16th?

A I'd say 4:30 or 4:35.

<sup>2</sup> Q Were you at that time at the edge of the bridge, or end of the bridge?

A I was only just a block or so away. I was a couple

blocks away at the time I received the call.

Q This is the end of the bridge, or the entrance, whichever you might call it, right at Alton?

A Yes, sir. It comes into Alton on Broadway.

Q Which one of the bridges?
[83] A That is the Clark Bridge.

Q You stationed yourself then at the end of the bridge?

A Yes, at the that's right.

. Q About how much later was it that you observed this red Rambler proceeding across Clark Bridge?

A Around, oh, five minutes, I would say.

Q How far did you pursue the red Rambler?

A About four blocks.

Q How fast was it going when it came off the bridge?

A It wasn't going at any high rate of speed. I would judge 25; 20 or 25, maybe 30 miles an hour.

Q How fast was it going through Alton?

A About the same speed.

Q Did it violate any traffic regulations in the way of stop signs and stop signals?

A No, sir.

Q How long did you follow it before you turned on your red light on your cruiser?

A A block and a half, roughly.

Q Did you actually pull up alongside of this car eventually, or were you always behind it?

A I stayed behind it. I was behind the car.

Q Did you have your siren on? A No, sir, I did not use the siren.

[84] Q What was the light condition at that time?

A It was daylight.

Q What was the general road condition?

A It was, well, for the most part it was dry. There were some icy spots.

Q What sort of street, what is the street that you

were following the red Rambler on?

A East Third. First on Langdon, and then on East Third.

Q. What is that a, a two-lane, four-lane street?

A Two-lane. Well, now, wait a minute. It is two moving lanes.

Q Two parking lanes and then two moving lanes?

A Yes.

Q So there would be a line of traffic going in each direction?

A Two lines of traffic, yes, sir, one going in each direction.

Q What were traffic conditions at that time?

A In that particular location, they were about normal. They weren't heavy.

Q Well, would you characterize it as not heavy, but

would it be light traffic?

A Well, light traffic. I would say light traffic.

[85] Q You indicated when the turn was made into George Street, or attempted turn into George Street, the car skidded?

A It did.

Q Did it actually make the turn into George Street and then skid?

A It skidded when he attempted to turn. There was a spot of ice at that particular intersection right on the, well, it would be on the left side, on his left side, be-

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cause as I motioned him to pull in to the curb, it looked as though he had intended to go straight, and when he saw the police car he attempted to make a right turn, which would have made him pretty well past the center of the intersection and put him on the wrong side of the street in making the right turn, and there was a spot of ice there which caused him to skid.

Q You were behind his vehicle at all times?

A Yes, sir, I was. When it come off the bridge—well, there was another car between his car and mine, and when he got to the Third Street intersection, the other car went straight up the hill, and he made a left turn.

Q Then you were the only car behind him? A That made me the only car behind him.

Q For what distance was that? A Approximately three blocks.

[86] Q During that three blocks, did the Rambler speed up at all?

A No. sir.

Q It maintained the same pace of speed it had been maintaining?

A Yes, sir.

Q You say you motioned for the automobile to pull over. You motioned while your vehicle was behind the Rambler?

A I did; yes, sir.

Q To the extent you said the car rolled away from the tree a little bit back across the street. It hit a tree and then it rolled away from it?

A That's right.

Q Back across the street, or away a few feet?

A Where he attempted to make the turn, it was going up a hill. When the car skidded, it went over a curb and it went up the sidewalk, and there was a stone wall on his left, and there wasn't room for the car to go between the wall and the tree. He hit the tree with the right front fender and bumper of his car, killed the engine, and the car rolled backwards.

Q. Who got out of the vehicle first, you or Mr. Kauf-man?

A I think we both got out about the same time.

[87] Q You stopped right next to where his car

stopped?

A I stopped—that would put me almost in front of him. He rolled backwards down the hill. My car was here (indicating). I stopped right where I was and got out of my car, and he got out of his about the same time I did.

Q Did you observe him having any difficulty getting

out of his car?

A I did not; no, sir.

Q Or in getting into your cruiser?

A No, sir.

Q How long was it before he got into your cruiser?
A A matter of a minute or so; just very short time;
I couldn't say definitely.

Q The car he had been driving could not be operated?

A It could have been driven, possibly.

Q You called the wrecker, what, by radio?

A I called my headquarters and asked them to send wreckers over, sir.

Q What was the hit-and-run charge that you were

looking for this automobile for?

A Well, he had been involved in a hit-and-run accident in Missouri. Missouri State Highway or Kirkwood police, Missouri State Highway Patrol called our head-quarters by radio and asked us to intercept this automo-[88] bile if he came across the bridge, and I was going to—my thought was to talk to the man about the accident on this side of the river, and Missouri authorities would be notified, and they were on their way over there to talk to him also in regards to the matter.

Q Missouri authorities were notified?

A They were notified that the man was apprehended, yes, sir.

MR. BARSANTI: No further questions. MR. MARTIN: No further questions.

THE COURT: Thank you. You may be—well, you will have to hold yourself available.

# CLIFFORD A. MARTIN,

being first duly sworn, testified in behalf of the government as follows:

# DIRECT EXAMINATION

#### BY MR. MARTIN:

Q Will you state your name, please?

A Clifford A. Martin.

Q What is your business or occupation, Mr. Martin?

A Towing service.

And where is your business located?

A In Alton, Illinois.

Q Now, sir, were you operating that business on De-[89] cember 16, 1963?

A Yes, I was.

Q Some time after 4:30, around 4:45 P.M. that day, did you receive a call from the Alton police to tow in a 1964 red Rambier?

A Yes, I did.

Q And did you tow that car in, sir?

A I did.

Q Can you tell us from where you towed the automobile to where you took it? Where did you pick it up, and where did you take it?

A I picked the car up at Third and George Street in Alten, and towed it to my place of business at 299 East

Elm, in Alton, inside of the building.

Q When you went to get the automobile, was anyone present on the scene where the automobile was?

A Officer Stahl was there, but they were leaving when I arrived.

Q Then you took it to your garage, is that right, sir?

A Yes, sir.

Q Now, sir, I will show you a Smith & Wesson revolver, Serial No. 287393, marked as Government's Exhibit No. 6, and ask you whether or not you ever saw that exhibit before?

A Yes, sir, I did.

[90] Now, will you tell us when was the first time you saw that exhibit?

A Shortly after I parked the car in the garage. We always check out everything we bring into the garage to see if there's any personal belongings or anything that should be taken care of, and that is when I found the gun in the back seat of the car.

Q Was it on the seat, or on the floor, or where?

A' On the seat, with the barrel pointing against the

left-hand panel.

Q Now, sir, from the time that you got this automobile at Third and George in response to the call of Cpl. Stahl, until the time you found this revolver, which is Exhibit No. 6, in the car, had anyone else been in that automobile?

A No, sir.

Q What, if anything, did you do with the gun when

you found it?

A At the time, I didn't do a thing but go back and call the Alton Police Department and told them that we had found a gun in the car, and asked them to send man out to take care of it.

Q And did they send a man out?

A They did.

Q Whom did they send out?

A Cpl. Stahl.

[91] Q After Cpl. Stahl arrived at your place, what,

if anything, was done with the gun?

A I picked up a pencil and stuck it in the barrel end and took it out of the car and brought it in and set it on a shop towel on my desk. When Cpl. Stahl got there, he said to finish wrapping it and lock it up until the F.B.I. arrived.

Q Then what did you do?

A I wrapped it up and locked it up in the drawer under his vision.

Q Then what did you subsequently do with the gun? A Agent Haynes, I believe it was, came in and picked

up the gun.

Q That is F.B.I. agent from the Alton vicinity? A Yes, sir. Maybe it was Talley on that agent. Q Both of these gentlemen are F.B.I. agents?

A Yes, sir.

MR. MARTIN: No further questions.

#### CROSS-EXAMINATION

#### BY MR. BARSANTI:

Q Mr. Martin, what time did you get a call to go tow

the automobile in?

A It was approximately 4:43 or 44; something like that. I don't have the exact time. I could get it, but I didn't bring it with me.

[92] Q What time did you arrive at the scene?

A Within about two or three minutes.

Q How far away is your place of business?

A I would say about not over a mile, but I was on the air on my truck at the time I received the call from my base. We have radio dispatched trucks.

Q You say Cpl. Stahl was still present?

A He was at the scene; yes, sir.

Where was he when you arrived?

A He was getting into his car, if I remember right, getting ready to leave the scene to go to the station. There was another car come in that was assisting on this, I believe, at the time I was there.

MR. BARSANTI: No further questions.

THE COURT: All right.

MR. MARTIN: No further questions.

THE COURT: All right. You may be excused, Mr. Martin.

#### (Witness excused.)

(Thereupon, a rental contract was marked by the reporter as Government's Exhibit No. 8 for the purpose of identification.)

#### JOHN LİGHT,

being first duly sworn, testified in behalf of the government as follows:

#### BY MR. MARTIN:

State your name, please, sir.

John Light. A

Q What is your business or occupation, Mr. Light? A

Alton Police Sgt., on the Alton Police Department. Were you employed by the Alton Police Department

on December 16, 1963?

Ves, I'was.

Were you called to the scene of an accident by Cpl. Stahl on that date?

A Yes, sir.

Where was this accident? ·Q A Third and George, in Alton.

And did you see the automobile which was involved in the accident?

A At the time when I arrived, the auto was being towed away from the scene.

Q Did you see a man that Cpl. Stahl had in custody at that time?

A Yes, sir.

Do you see that man in the courtroom?

Yes, sir.

Will you point him out to us, please, sir?

A He is sitting next to you, sir.

MR. MARTIN: If the Court please, may the record show the witness is indicating the defendant?

THE COURT: All right.

Q (By Mr. Martin) Did you accompany Cpl. Stahl back to the police station?

A Yes, sir, I followed Cpl. Stahl in my car, in my

squad car.

Q And after you arrived at the police station, did you search and assist in the search of the man that was in custody, the defendant?

A Yes, sir.

Now, sir, I will show you automobile rental contract from the Metro Auto Rental, Incorporated.

MR. BARSANTI: If the Court please, if I might object to this line of questioning, anything taken from the person of Mr. Kaufman at this time, I will object to it. This is—

THE COURT: I can't hear you.

MR. BARSANTI: If the line of questioning is anything taken from Mr. Kaufman by the Police Department or any agent, I will object to any testimony about it or any introduction.

THE COURT: On what grounds, Mr. Barsanti?

MR. BARSANTI: That it wouldn't be relevant to this man. While there may have been an arrest on another [95] matter, another suspicion, it would not justify search of this person for evidence which might be relevant in this case.

THE COURT: I will overrule that.

Q (By Mr. Martin) Now, sir, here is Government's Exhibit No. 8 which is a Metro Auto Rental, Incorporated, rental contract for an automobile. I will ask you if you have ever seen that contract before, sir?

A There was such an auto rental sheet on his person at the time he was searched. There was. This resembles

the one that I took from his person.

Q All right. Sir, what, if anything, did you do with the contract that you took from his person on the date that you searched him, December 16, 1963?

A I turned it over to Capt. Petersen of the Alton

Police Department.

Q What, if anything else, did you find on his person during the course of that search?

A I found a total of \$352.50 in currency on his per-

son.

Q What, if anything, did you do with that currency? A I turned the currency over to Capt. Petersen of the Police Department.

Q That is your immediate superior in the Alton Police

Department?

A Yes, sir.
[96] MR. MARTIN: No further questions, Your Honor.

#### CROSS-EXAMINATION

#### BY MR. BARSANTI:

Q Mr. Light, before you searched Mr. Kaufman, did you advise him that he had a right to consult an attorney?

He talked with Lieutenant-

MR. BARSANTI: Excuse me. Would you please respond to the question I asked you?

THE COURT: He asked if you advised him.

THE WITNESS: No, sir, I did not.

(By Mr. Barsanti) Was anybody else present when you searched him?

Yes, sir.

Q Who?

Cpl. Stahl.

Q. Did Cpl. Stahl advise him of his right to counsel?

I have no knowledge of that, sir. You didn't hear it done?

- No, sir. A
- Where was this? In the Alton Police Station? . .

Yes, sin A

At that time, you removed what you identified as Government's Exhibit 8, this so-called rental contract, or one like it, and his cash?

A Pardon?

Q You took the cash and the contract, which is [97] Government's Exhibit 8, from his person at that time?

A Yes, sir.

MR. BARSANTI: I have no further questions.

THE COURT: All right.

MR. MARTIN: No further questions, Your Honor.

THE COURT: All right. Step down.

(Witness excused.)

# WILLIAM H. PETERSEN,

being first duly sworn, testified in behalf of the government as follows:

# DIRECT EXAMINATION

### BY MR. MARTIN:

State your name, please, sir.

Captain William H. Petersen. A.

What is your business or occupation, Mr. Petersen? Captain of Police, Alton, Illinois, Police Depart-A ment

Sir, were you employed in that capacity as Captain in the Alton Police Department on December 16, 1963?

A I was.

Q Were you on duty that afternoon that day?

I was. A

Were you present when Harold Kaufman was brought into the station? [98] A I was.

Q Do you see Harold Kaufman in the courtroom to-

day?

Yes, sir, I do.

Will you point him out to us, please, Captain?

The gentleman sitting at the end of the table there. MR. MARTIN: If the Court please, may the record show the witness is indicating the defendant?

THE COURT: Yes, the record will so show.

(By Mr. Martin) In whose custody was he at the time he was brought into the Alton Police Station?

A Cpl. Stahl and Sgt. John Light.

Had he been arrested?

A Yes, sir, he had.

Under what name had he been arrested at that time.

A. He gave the name of Donald Taylor.

Q Now, sir, were you present when the defendant, Mr. Kaufman, was searched by Sgt. Light while Cpl. Stahl was there?

A Yes, sir, I was,

MR. BARSANTI: If the Court please, I will object to that testimony. He is impeaching the testimony of Sgt. Light.

THE COURT: Well, I don't think that is a proper objection. It will be overruled. He may testify.

[99] MR. MARTIN: I think he answered that he was present.

THE COURT: Yes.

Q. (By Mr. Martin) Now, sir, the items of personal property and belongings that were removed from the person of the defendant, Harold Kaufman, during the course of that search, were they turned over to you, sir?

A Yes, sir, they were.

Q Do you have a list of the items that were turned

over, sir?

A The only items that I have listed, sir, are the valuable items which was taken from him, such as money, billfold, and other—

Q Now, sir, how much money was taken from him?

4 \$352.03, I believe, sir.

Q What, if anything, was done with that money?

A The money was separated by denominations and later released to Mr. Al Rushing of the F.B.I. I have a receipt where it was released.

Q And do you have that receipt with you, sir?

A I do, sir.

Q Now, sir, will you refer to that receipt and tell us how many one dollar bills was in that group of bills that were released to the F.B.I. agent?

A There were seventy one-dollar bills.

[100] MR. MARTIN: No further questions, Your Honor.

THE COURT: All right.

#### CROSS-EXAMINATION

#### BY MR. BARSANTI:

Q Capt. Petersen, do you know of any reason why Sgt. Light can't remember that you were present when—MR. MARTIN: I will object to that, if the Court please.

THE COURT: It will be sustained.

(By Mr. Barsanti) You were present at all times when Sgt. Light and Cpl. Stahl searched Kaufman?

A At the time of the search, yes. I waw standing to

the rear of the officers near our exit door.

Q Who else was in the room?

Cpl. Stahl, Sgt. Light, Mr. Kaufman, and at one time Lt. Schmidt was there, the commanding officer of the afternoon shift.

Q Did you advise Mr. Kaufman of his right to have

an attorney?

Did I advise him?

Yes. Q

A No. sir, I did not.

MR. BARSANTI: No further questions.

All right. THE COURT:

MR. MARTIN: No further questions, Your Honor. [101] THE COURT: Step down.

(Witness excused.)

THE COURT: We will have our morning recess. Members of the jury, bear in mind the admonition I have given you heretofore.

(Following a brief recess, the further following proceedings were had:)

A New York City Court Summons was marked by the reporter as Government's Exhibit No. 9 for the purpose of identification.

A receipt was marked as Government's Exhibit No. 10 for the purpose of identification.

A Western Union receipt was marked as Government's Exhibit No. 11 for the purpose of identification.

A receipt from Bade's Sunoco was marked as Government's Exhibit No. 12 for the purpose of identification.)

## JOHN L. NEWCOMER,

being first duly sworn, testified in behalf of the government as follows:

### DIRECT EXAMINATION

### BY MR. MARTIN:

Q Will you state your name, please, sir?

A John L. Newcomer.

Q What is your business or occupation, Mr. New-comer?

[102] A I am employed as a special agent with the Federal Bureau of Investigation.

Q And were you employed as a special agent of the Federal Bureau of Investigation on December 16, 1963?

A Yes.

Q To what office were you assigned, sir?

A The St. Louis office.

Q And did you have occasion to participate in the investigation of the robbery of the Roosevelt Federal Savings and Loan Association that occurred on December 16, 1963?

A Yes.

Q And during the course of that investigation, did you have occasion to search a 1964 red Rambler bearing New York license plate 1963 8Z6367?

A Yes.

Q And where, sir, was that automobile at the time you searched it?

A The automobile was at a towing service garage

titled Cliff's Towing Service, in Alton, Illinois.

Q. Now, sir, I will show you two folders which are marked as Government's Exhibits 5-A and 5-B, containing American Express Travelers' Checks. Will you examine those, sir, and tell us whether or not you have seen those before?

A Yes, I have seen these.

[103] Q When was the first time you saw those?

A On the night in question I found these two packets on the floor board of the red Rambler.

Q And what, if anything, did you do with those two folders after you found them in that red Rambler?

A I placed each of them in a plastic envelope, identified them for what they were, and initialed them and

dated them on a white slip of paper, and placed that into the envelope along with the packets.

Q And, sir, did you subsequently bring those to your

St. Louis office?

A Yes, I did.

Q Did you make an inventory of the checks contained in those two folders?

A Yes, I did.

Q Sir, will you look at those two folders again, look in the inside, the articles inside.

(The witness looks in folders.)

Q Now, sir, I will ask you whether or not anything has been added to those two folders, or taken from those two folders, from the time that you found them until you are examining them now?

A No, there hasn't been anything added or taken away.

Q Now, sir, I will call your attention particularly to [104] the checks contained in there, the Travelers' Checks. When you arrived at your office here in St. Louis, did you make an inventory of those Travelers' Checks?

A Yes, I did.

Q An you inventoried them by denomination and by serial numbers?

A Yes.

Q Will you tell us the face value of the Travelers' Checks contained in those two packets?

A Do you mean the total value?

Q Yes. Yes, sir.

A Total contents of the two packets contained \$11,520

in American Express Travelers' Checks.

Q Now, sir, have you had occasion to check your serial numbers with the serial numbers made up by Mr. Woollen of the Federal Savings and Loan Association?

A Yes, I did.

Q Now, I will show you Exhibit 4, which is his list of serial numbers, and ask you whether or not there is any discrepancy between the list of serial numbers that he has there and the list of serial numbers that you found or inventoried?

A No. the serial numbers and the totals are the same.

Q All right. Thank you, sir. Now, sir, here is a sum-[105] mons Number B1084276 in the Criminal Court of the City of New York for traffic violations, marked as Government's Exhibit No. 9. Have you ever seen that before?

A Yes.

Q When was the first time you saw that exhibit?

A On the same evening that I had occasion to find the packets of Travelers' Checks.

Q And did you find that exhibit, sir?

A Yes.

Q Where?

A This was found in the car.

Q Now, sir, here is a gasoline receipt showing the date of 12-15-63, from Harrisburg, Pennsylvania, for payment of gasoline, marked as Government's Exhibit No. 10. Have you seen that exhibit before?

A Yes.

Q Was that recovered from the same red Rambler on December 16, 1963?

A Yes, same time, same occasion.

Q Sir, here is a Western Union Telegraph receipt, Harrisburg, Pennsylvania, dated December 15, 1963. The time shown is 10:40, showing a payment of fifty dollars from Paul King, Telegraph Money Order to Mrs. Pat Scott of New York City, marked as Government's Exhibit [106] No. 11. Have you seen that recept before, sir?

A Yes.

Q And where was the first time that you saw that?

A This was found also in the car, at the same time, same occasion.

• Q All right, sir. Here is a receipt for road service marked Government's Exhibit No. 12, from Bade's Sanoco Station, at Eastern and Mills Roads, Willow Grove, Pennsylvania, dated December 15, 1963. Have you seen that receipt before?

A Yes.

Q When is the first time you saw that receipt?

A On the same night, found it in the car, same occasion.

MR. MARTIN: If the Court please, I'd like to offer into evidence Government's Exhibits 9 through 12, inclusive.

MR. BARSANTI: May I see them? If the Court please, I would object to the introduction of these exhibits, specifically Exhibit 9, first number, not being relevant to any matter in issue in this case, found and attempted to be used as evidence. This matter was obtained in a search which was illegal, and Exhibit 10—further, on Government's Exhibit 9, we further object, there has been no identification that it would be in any way connected with this defendant, Harold Kaufman. In no way connected with defendant Harold Kaufman. No identification on it as such.

THE COURT: Let me see.

[107] (Mr. Barsanti hands exhibit to the Court.)

THE COURT: What else?

MR. BARSANTI: Government's Exhibit 10, which purports to be a receipt from the Tidewater Oil Company Products of such station, no identification as to what the receipt is actually from. It indicates that a certain dollar amount, apparently for gasoline, but it is not sure. It indicates cash. No relationship or tie to this matter, Harold Kaufman. There is an attempt to use it as evidence in this charge here. It was obtained illegally by the F.B.I. He was not under arrest by the United States Government at that time. He was being held by the Alton Municipal Police Department for the Missouri State Highway Department on a traffic violation. It would further not be relevant to any matter in this proceeding.

THE COURT: All right.

MR. BARSANTI: Government's Exhibit 11 purports to be a Western Union telegraphic receipt. Subject to the same objections made on Exhibit 10. It was taken from this vehicle by special agent of the F.B.I. from Mr. Kaufman while he was not under the arrest of the United States Government; obtained illegally. There is also no evidence of this being relevant in the matter affecting Harold Kaufman in the evidence on this point.

[108] THE COURT: All right. What else have you got?

MR. BARSANTI: And Exhibit 12, which purports to be a receipt from Bade's Sunoco Station of some kind; same objection, Your Honor. It was obtained by a special agent of the F.B.I. when the defendant was not under arrest by the United States Government. He was being held on a traffic charge. This was not related to Mr. Kaufman in any way, or anything showing there would be any relevancy in this proceeding.

THE COURT: What do you have to say, Mr. Martin?

Are you going to connect it up later?

MR. MARTIN: If the Court please, the exhibits are offered for the purpose of showing where the automobile was at various times immediately preceding this robbery. The first one shows that it was in New York. It shows the date it was in New York. The others show that the automobile was brought from New York to St. Louis through the points there where those receipts were given. At the time of the search, the automobile had been wrecked, was in the custody, more or less, of the Alton Police, and that these are not items taken from the defendant himself. I could give the Court some additional information on the question of the legality of the search, if the Court has any question in mind.

MR. BARSANTI: If the Court please, further comment, the purpose for the introduction of this, Mr. Martin [109] stated, there certainly has been no evidence which would make that connection possible. There is no evidence which would show that those relate to the matters he is trying to prove by that. The traffic violation ticket, which I believe is Exhibit 10, certainly is not related to Mr.

Kaufman in any way.

THE COURT: It is related to the automobile.

MR. BARSANTI: It may be related to the automobile, but there is no identification Mr. Kaufman was driving that automobile on this date. It would be hearsay evidence to be introduced in this way.

THE COURT: Well, I think it would merely go to show the presence of the automobile in New York on the 14th day of December, 1963. Frankly, I don't know what

this would prove, because it has no—it has a date on it, but I don't see any location.

MR. MARTIN: The code is HBGPA. That is Harris

burg, Pennsylvania.

THE COURT: I will let them in on the basis he will tie them up later.

MR. MARTIN: Thank you, Your Honor.

(Whereupon, Government's Exhibits No. 9, 19, 11 and 12 were received in evidence.)

MR. MARTIN: No further questions, if the Court [110] please.

#### **CROSS-EXAMINATION**

#### BY MR. BARSANTI:

Q Mr. Newcomer, at the time you searched this Rambler automobile at Cliff's Towing Service, what time of the evening was that?

A Approximately 9:00 o'clock.

Q Who else was present when you searched it?

A Special Agent James Talley of the same organization, Cliff, the owner of—Cliff Martin, the owner of the garage, two of his employees, whose names I do not know.

Q How long were you at the garage?

A Roughly two hours.

Q At the time you began searching the automobile at 9:30, was Mr. Kaufman under arrest by the United States Government?

A That I do not know.

Q. You proceeded there from the St. Louis office?

A Yes.

Q What time did you get notification to proceed to Alton?

A I had earlier been at the Savings and Loan Association in St. Louis, and approximately an hour after I had been at the Savings and Loan Association I was asked [111] to proceed to Alton.

Q What time did you arrive at the Savings and Loan

Association?

I'd say in the neighborhood of 6:30.

So you would have gotten the notice to proceed to Alton somewhere around 7:30, the best you can place it?

A · Approximately, yes.

Q Did you proceed directly to Cliff's Towing Service Garage?

A Yes.

Were you informed when you were to proceed to Cliff's Towing Service that this might be in connection with the robbery of the Savings and Loan Association you were investigating?

A Yes.

Q And from whom did you receive those instructions?

From the assistant agent in charge of the St. Louis office, Mr. Donald Morley.

Donald Morley?

A Yes.

Q Was there another agent with you at the Savings and Loan Association making the investigation?

I was with Special Agent James Talley.

Q You proceeded then to the garage in the same ve-[112] hicle or in separate vehicles?

No, we were in the same vehicle.

After you left Cliff's Garage, which you stated was roughly when? About what time?

Roughly 11:30.

And from there where did you go?

We returned directly to the office of the Federal Bureau of Investigation at St. Louis.

Arriving at about what time?

Around 12:30.

When you arrived back here at the office, was Harold Kaufman, the defendant in this matter, present?

Not to my knowledge.

Q To your knowledge, at that time, had he been placed under arrest by the United States Government?

Not to my knowledge.

MR. BARSANTI: No further questions.

MR. MARTIN: No further questions.

THE COURT: Step down.

(Witness excused.)

## ALBERT J. RUSHING, JR.

being first duly sworn, testified in behalf of the government as follows:

## [113] DIRECT EXAMINATION

#### BY MR. MARTIN:

Q State your name, please, sir.

A Albert J. Rushing, Jr.

Q What is your business or occupation, Mr. Rushing?

A .I am a special agent with the F.B.I.

Q How long have you been a special agent with the F.B.I.?

A Twenty-two years.

Q Calling your attention to the date of December 16, 1963, were you a special agent with the Federal Bureau of Investigation on that date?

A Yes, sir, I was.

Q And did you participate in and assist in the investigation of the robbery of the Roosevelt Federal Savings and Loan Association, which occurred on December 16, 1963?

A Yes, I did.

Q Sir, did you have occasion to go to the Alton Police Department?

A Yes, sir, I did.

Q Did you have occasion to contact Capt. William Petersen of the Alton Police Department?

A Yes, sir, I did.

Was this on December 16, 1963?

[114] A Yes, sir.

Q And did he have occasion to turn over some items to you?

A Yes.

Q Now, sir, I will show you a rental, automobile rental contract of the Metro Auto Rental, Incorporated, from New York, marked as Government's Exhibit No. 8, in the name of Arthur Cooper, and ask you whether or not you recognize that contract?

A Yes, sir, I do.

Q When was the first time you saw that contract?

A On the evening of December 16, 1963.

Q Was that given to you?

A Yes, sir, it was given to me by Capt. Petersen.

Q Now, sir, did Captain Petersen give you anything else on that date?

A Yes, sir.

Q What else did he give you?

A Well, he gave me some money.

Q And how much money did he give you?

A He gave me \$352.03.

Q And do you have some money with you now, sir?

A Yes, sir, I do.

Q May I have that, please, sir?

[115] (Witness hands envelope to Mr. Martin.)

Q (By Mr. Martin) This is just coins?

A Yes, sir.

Q No writing on it, or anything?

A No, sir.

MR. MARTIN: Will you mark it?

(Thereupon, a plastic envelope containing currency and an envelope containing coins was marked by the reporter as Government's Exhibit No. 13 for the purpose of identification.)

Q Now, sir, I will give to you Government's Exhibit 13, which is a package of money, currency and coins. Sir, have you ever seen that package before, the money contained in the package?

A Yes, sir.

Q When was the first time you saw the money contained in that package?

A On the evening of December 16, 1963.

Q And is that part of the money received from Capt. William Petersen of the Alton Police Department?

A Yes, sir, it is.

THE COURT: Is it a part, or all?

THE WITNESS: It is part.

Q (By Mr. Martin) And how much is contained in [116] that package there, sir?

A \$328.50.

Q I believe you said that Capt. Petersen gave you \$352.03?

Yes, sir. A

Well, there is a difference?

Yes, sir. A

What did you do with the difference between the \$352.03 and the \$328.50?

A I delivered that to Harold Kaufman on December

18, 1963.

Q Now, how much money did you deliver to Harold Kaufman?

A I delivered to Harold Kaufman \$29.58.

And why did you give him that amount, sir?

Because the total amount of money that had been recovered in this investigation exceeded by that amount the amount which the Roosevelt Federal Savings and Loan Association reported as having been stolen.

Now, sir, did you inventory the bills by serial numbers and denominations, which you received from Capt.

Petersen?

A Yes, sir, I did.

Q Did you make a list of those serial numbers?

[117] A Yes, sir, I did.

Q Now, sir, I will ask you if you have seen the list of serial numbers of fifty one-dollar bills which has been marked as Government's Exhibit 3?

A Yes, sir, I have.

Q Now, sir, of the money that you recovered or received from Capt. William Petersen of the Alton Police Department, how many one dollar bills did you receive from Capt. Petersen?

There were seventy one-dollar bills received from

Capt. Petersen.

Q Now, sir, of those seventy one-dollar bills, did you compare the serial numbers of those bills with the serial numbers of the bills listed on Government's Exhibit No. 3?

A Yes, sir, I did.

And you also have inventoried those serial numbers yourself, sir?

A Yes, sir.

Q Now, of those seventy one-dollar bills that you received from Capt. Petersen, how many of those one dollar bills appear on the list which is marked as Government's Exhibit No. 3?

A Fifty of them.

MR. MARTIN: If the Court please, I'd like to offer into evidence Government's Exhibit No. 8, and the money, [118] Exhibit No. 13.

THE COURT: All right.

MR. BARSANTI: I object to Government's Exhibits 8 and 13 for the reason that they were taken from the person of Harold Kaufman illegally, and that they were removed by the Alton Police Department in the course of a traffic investigation. They are being used in this proceeding by the United States Government, and Mr. Kaufman, when they were taken from him, was not under arrest by the United States Government. He was under investigation very shortly thereafter, or immediately thereafter, and I move that they be excluded.

THE COURT: That will be overruled. .

(Whereupon, Government's Exhibits Nos. 8 and 13 were received in evidence.)

MR. MARTIN: No further questions.

THE COURT: All right.

#### CROSS-EXAMINATION

#### BY MR. BARSANTI:

Q Mr. Rushing, did you make any reports, at any time, concerning the activities you engaged in, in this investigation?

A Yes, sir.

MR. BARSANTI: Could I get those reports, Mr. Martin?

MR. MARTIN: Maybe you can find it easier than I [119] can.

THE WITNESS: I have the originals of the report.

MR. MARTIN: You have the original pertaining to
the recovery of the money and the contract?

THE WITNESS: Yes, sir.

Q (By Mr. Barsanti) Well, would these be all of the reports which you made or filed in connection with this

investigation?

MR. MARTIN: If the Court please, I will object to all of the reports. I think he is only entitled to any report pertaining to the matter about which he has testified.

THE COURT: I think that's right. You are entitled

to that.

MR. BARSANTI: All right.

MR. MARTIN: Will you find that one for us, Mr. Rushing, pertaining to the recovery of the money and the contract, the items from the Alton Police Department?

(Mr. Rushing steps down from the witness stand to his files.)

MR. MARTIN: If the Court please, may the record show that we are delivering to counsel for the defense, report of Special Agent Albert J. Rushing, Jr., dated December 19, 1963, pertaining to information received from Capt. William Petersen of the Alton Police Department?

[120] We are also delivering to him the handwritten notes of Mr. Rushing pertaining to the inventory of the bills and the money received from the Alton Police Department, together with a copy of a receipt of Harold Kaufman for receipt of \$29.53.

THE COURT: All right.

MR. BARSANTI: May I have just a moment, Your Honor?

THE COURT: You may.

(Mr. Barsanti looks at report furnished to him.)

Q (By Mr. Barsanti) Mr. Rushing, the documents and reports which have been turned over to me, are these all of the reports which you made in connection with these matters you have testified about so far?

A No, sir. There would be a report pertaining to my return or delivery of money to Harold Kaufman. That is a report there pertaining to the receipt of items from Capt. Petersen, and together with my own written inven-

tory of the serial numbers of the bills.

Q These would be all of the reports relating to what you have testified about going up there and meeting with Capt. Petersen?

A Yes, sir.

Q What time did you arrive at the Alton Police Department?

[121] A Well, I don't know the time, Mr. Barsanti.

Q How did you happen to go to the Alton Police Department?

A Because I was participating in the investigation pertaining to the robbery of the Roosevelt Savings and Loan Association.

Q From whom did you receive a call indicating you

should go to the Alton Police Department?

A Well, I didn't receive a call. I was at the Roosevelt Federal Savings and Loan Association in River Roads, and I left from there.

Q To go to the Alton Police Department?

A Yes, sir.

Q Had anybody notified you that there was some reason to come to the Alton Police Department?

A Yes, sir, they had.

Q Who?

A Special Agent Donald Morley, the assistant special agent in charge of the St. Louis F.B.I. office, who was with me at Roosevelt Federal Savings and Loan Association.

Q He notified you to go to the Alton Police Department?

A Yes, sir.

Q Now, were you out at the Roosevelt Federal Savings and Loan Association at the same time that Agent [122] Newcomer and Agent Talley were there?

A There were other special agents there during the time I was there. I do not recall that they were specifi-

cally there at the same time I was there.

Q Do you have any recollection at all so that you can fix this time of when maybe you arrived at Roosevelt Federal and when maybe you left there?

A Yes, sir, I can estimate the times.

Q What would be your estimate?

A I would estimate that I arrived at the Roosevelt Federal Savings and Loan Association prior to 5:00 o'clock, and probably no earlier than 4:30. I think it was certainly after 4:30.

Q About how long were you there?

A I believe)that I was there certainly in excess of an hour.

Q And when you left there, did you proceed directly to Alton?

A Yes, sir, I did.

Q Did you proceed directly to the Alton Police Department?

A Yes, sir, I did.

Q In light of what you testified, can you give a reasonably good estimate as to when you arrived there?
[123] A I would estimate approximately 6:30 P.M.

Q Did you immediately talk to Capt. Petersen?

A I think I may have been introduced to him shortly after my arrival, but I didn't talk to him in detail at that time.

Q Were you advised that the man who had been identified as Harold Kaufman had been searched?

A While I was at the Alton Police Department, I was so advised.

Q That he had been before you arrived, or after you arrived?

A It was my understanding that he had been searched before I arrived.

Q And did some member of the Alton Police Department advise you of that?

A Yes, sir.

Q Did Capt. Petersen?

A He and others.

Q Who were the others?

A Sgt. Light so advised me.

Q Did you see the defendant, Harold Kaufman, before you received the property you have described from Capt. Petersen?

A Yes, sir, I did see him.

Q Did you talk to him at all? [124] A No, sir.

Q You just physically saw him?

A Yes, sir.

Q At the time you received the property from Capt. Petersen, was Mr. Kaufman put under arrest by the United States Government?

A At approximately the same time.

Q Which came first?

A I believe that I received the money prior to that time.

Q Were you the one that put Mr. Kaufman under arrest?

A Well, he was, I signed a receipt assuming custody for him. I signed as a representative of the F.B.I. at the

Alton Police Department.

Q In other words, the sequence was the Alton Police searched him, you arrived, at least as you recall it, you were advised of him, you saw Mr. Kaufman, but you didn't talk to him. You got the property from Capt. Petersen, and then you put him under arrest?

A I think that is correct, sir.

MR. BARSANTI: I have no further questions.

MR. MARTIN: No further questions.

THE COURT: Step down.

(Witness excused.)

[125] MR. MARTIN: Mr. George Peet. If the Court please, I think maybe we won't need to call this witness at this time. I think the government will rest.

THE COURT: All right.

(The witness leaves.)

MR. MARTIN: We rest at this time.

## DEFENDANTS' EVIDENCE

### PATRICIA SCOTT.

being first duly sworn, testified in behalf of the defendant as follows:

[180] Q Incidentally, after Mr. Kaufman left New York City and in the month of December of 1963, did you hear from him?

A When?

Q I think you said the last time you saw him was in December of 1963?

A Yes.

Q Was that in New York City?

A Yes. it was.

Q All right. Now, after the time he left New York City, on the occasion you last saw him in New York City, did you hear from him at any subsequent time?

[181] A I received mail from him.

Q You received mail from him?

A Yes.

Q Did you receive any telephone calls from him?

A Yes.

Q And from where did you receive the telephone calls?
A I think he said he was speaking from the Marshal's office.

Q Speaking from the Marshal's office?

A Yes.

Q Did you receive any telephone calls from him while he was en route from New York City to some destination?

A At an time?

Q After he left New York City until you received a call from him from the Marshal's office, did he call you from any other place?

A I don't think he did; no.

Q And was that the Marshal's office here in St. Louis?

A Yes, I would think so.

Q Did you receive any telegrams from him between the time that he left New York City in December until you received a call from him from the Marshall's office in St. Louis?

A I don't remember any.

Q Do you recall the date on which you received a tele-[182] phone call from the Marshal's office in St. Louis? A No, I do not.

Q At that time, did he tell you why he was in the Marshal's office here in St. Louis?

A No.

Q He didn't tell you why he was calling from the Marshal's office here in St. Louis?

A Well, he didn't have to. I knew why.

Q You knew why?

A Yes.

Q How did you know?

A Because a lawyer called me and told me.

Q What is the lawyer's name?

A The lawyer then in New York was Zaidins, Z-a-i-d-i-n-s.

Q Z-a-i-d-i-n?

A n-s.

Q Is that his first or last name?

A That is his last name.

Q Do you recall his first name?

A Yes. Earl.

Q And when did the attorney call you and tell you that Mr. Kaufman was in St. Louis?

A I think the lawyer called me the day after Harold was arrested. The bondsman also called me. I don't know [183] who called first, but it was either the same day or the day after he had gotten arrested, and they told me he was arrested in St. Louis.

Q Did the lawyer also tell you how he knew that Harold Kaufman had been arrested here in St. Louis?

MR. BARSANTI: I object to the question. It calls for hearsay.

THE COURT: It will be sustained.

Q (By Mr. Martin) Do you know a person by the name of Paul King?

A No, I do not.

Q What is your New York address when you were—as of December 15, what was your New York address?

A 156 East—432 East 156th Street.

Q Which apartment?

A AG.

Q I will show you Government's Exhibit No. 11, which is a Western Union money order receipt, showing from

Paul King fifty dollars to Mrs. Pat Scott at 432 East 156th Street, New York, New York.

A (Indicating yes)

Q Do you notice that? Now, I will ask you did you receive by telegram fifty dollars on or about the date that appears on that receipt of December 15, 1963?

[184] A Yes, I did.

Q. Now, I'll ask you again who is Paul King, named

as the sender in that telegraph receipt?

A Paul King is Harold Kaufman.

Q Then this money was sent by Harold Kaufman to you?

A Yes.

MR. MARTIN: Just a moment, Your Honor.

THE COURT: That's all right. Take as long as you

want.

Q (By Mr. Martin) Now, Miss Scott, the last time that you saw Mr. Kaufman in New York City, did he tell you where he was going?

A Yes, he did tell me.

Q Where did he tell you he was going?

A I'm not sure. I can't really remember where he said he was going, but I know it wasn't St. Louis.

Q Did he tell you why he was going to this particular

place?

A He said he was going to pull a job for Christmas.

[359]

#### VOLUME II

## JOHN DAVIDSON, M. D.

being first duly sworn, testified in rebuttal in behalf of the government, as follows:

### DIRECT EXAMINATION

### BY MR. MARTIN:

Q Will you state your name, please, sir?

A Dr. John Davidson.

6.0

Q Dr. Davidson, have you ever seen the defendant, Harold Kaufman, before?
[360] A Yes, I have.

Q What date did you see him?

A I can't recall the exact date without having heard the date said earlier today. I remember seeing him about 9:00 o'clock in the evening at the Federal Bureau of Investigation headquarters and as I heard someone mention before, it was December 16th, I believe.

Q 1963? A Yes

MR. BARSANTI: If the Court please, if this witness intends to testify as to any medical examination made of the defendant on December 16, 1963, we will object to any inclusion or any testimony from this doctor as to any examination, or anything else which happened in connection with Harold Kaufman at that time. It was done without his consent. There has been no waiver of any privilege of any kind, and we will object to it.

THE COURT: I don't know what the purpose of it is.

Come up and let's make the record.

(Thereupon, the following colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury:)

MR. MARTIN: If the Court please, this witness will testify that on December 16, 1963, he saw the defendant [361] in the F.B.I. office and observed his demeanor, and he can testify as to what his nervous condition was, and what he observed about him at that time.

MR. BARSANTI: I think the records of this Court will show at this time he had not been brought before the

United States Commissioner, or anything else.

THE COURT: I am sure of that, but the point is we have a different condition here than we had in the other case where Dr. Hartman was appointed to examine him by an order of Court of April 23, 1964.

MR. BARSANTI: Well, let me say this. If this man is to testify as to what he observed, and it is not taken into account, not anything said by Harold Kaufman, at this stage I assume he is like anybody else who saw him

physically. We will object to anything, any statement made by the defendant at this time to this man, any of the F.B.I. agents, or anybody else. He was not brought before a Commissioner before a reasonable period of time. He was under intense investigation for a particular crime, and they suspected him particularly of it.

MR. MARTIN: He was brought before the Commis-

sioner on the morning of the 17th.

### [371]

## GEORGE M. PEET,

being first duly sworn, testified in behalf of the government in rebuttal, as follows:

#### DIRECT EXAMINATION

#### BY MR. MARTIN:

Q State your name, please, sir.

A George M. Peet.

Q What is your business or occupation, Mr. Peet?

A I am a Special Agent with the Federal Bureau of Investigation.

Q And how long have you been a Special Agent with

the Federal Bureau of Investigation?

A Approximately 17 years.

Q To what office were you assigned on December 16, 1963?

A St. Louis.

Q Did you assist and participate in the investigation of the robbery of the Roosevelt Federal Savings and Loan Association which occurred on December 16, 1963?
[372] A Yes, I did.

Q On that date, sir, did you see the defendant, Harold Kaufman?

A Yes, sir.

Q Do you see him in the courtroom?

A Yes, sir.

Q Will you point him out to us, please, sir?

A The gentleman in back with the glasses.

MR. MARTIN: If the Court please, may the record show the witness has indicated the defendant?

THE COURT: Which one are you talking about?

THE WITNESS: The third gentleman, sir.

THE COURT: There's a couple in the first row there. Let the record show he is indicating the defendant.

Q (By Mr. Martin) Did I ask you if you saw him on December 16, 1963?

A Yes, sir.

Q Where did you see him, sir?

A At the Alton Police Department.

Q About what time?

A Shortly before 6:00 o'clock.

Q Will you tell us whether or not there was anyone

else present?

A At the time I talked with Mr. Kaufman, at the [373] same time, in the same room, were Special Agent Walls of our office, Special Agent Hanes who is assigned to the Springfield, Illinois, office; there was Chief of Police Obertz of the Jennings Rolice Department, and also Sgt. Zlotopolski of that same Department. There were five of us all together.

Q Did you observe the defendant at that time?

A Yes, sir

Q . About how long was he in your presence?

A Well, he was in my presence from roughly 6:00 P.M. until he was deposited at the St. Louis Jail at about 9:55 that same evening.

Q And did you talk with him and hear his conversation with other agents and officers who were present?

A Yes, sir.

Q And will you tell us whether or not that conversation that you heard, either between you and the defendant, or the defendant and the other persons present, to

you sounded logical or illogical?

MR. BARSANTI: If the Court please, I will object to any testimony that relates in any way to these conversations until it is shown that they were freely and voluntarily received from the defendant. It is still our contention they were not, but any statements made by the de-[374] fendant, or conversations with him, were all part

of the tainted area of the illegally obtained information.

MR. MARTIN: I will withdraw the question at this time. Your Honor, and lay additional foundation.

THE COURT: All right.

Q (By Mr. Martin) Sir, during the time that Mr. Kaufman was in your presence, did you make any threats toward him?

MR. BARSANTI: If the Court please, I will object to that before it goes any further. It is not a proper question at this time. If there is to be an examination in this

area; a separate voir dire-

THE COURT: I don't know what area you intend to pursue, but in the interest of saving time, I think it would be better to be done out of the hearing of the jury, and since it is twenty minutes to 5:00, I am going to excuse the jury until 9:30 tomorrow morning and Court will remain in session. 9:30 tomorrow morning. Bear in mind the admonition I have given you heretofore.

(Thereupon, the following proceedings were had out of the hearing of the jury:)

THE COURT: All right. You may proceed.

Q (By Mr. Martin) Agent Peet, while the defendant was in your presence, did you make any threats toward him?

[375] A No, sir.

Q Did you hear any of the other agents or police officers make any threats toward him?

A No, sir.

Q Were you able to observe his nervous condition, sir?

A I was able to observe his condition, his physical condition.

Q Will you describe for us what you observed about

his physical condition?

A He was sitting in a chair, perhaps four feet from the desk where I was sitting. He didn't seem terribly nervous at the time. His lip was swollen, and he apparently experienced a little discomfort on the left side, I believe it was, and moved several times back and forth in the chair because of it. Q Now, sir, did you, or anyone, strike the defendant while he was in your presence?

A No, sir.

Q Did you, or anyone, make any promises to the defendant while he was in your presence?

A No, sir.

Q Was there any discussion about any leniency toward the defendant?

[376] A I didn't quite hear your question.

Q Was there any discussion or mention of any leniency towards the defendant?

A No, sir.

Q Now, sir, did you discuss with him the robbery which had occurred at the Roosevelt Federal Savings and Loan Association?

A Yes, I did.

Q What, if anything, did he tell you, sir?

Well, he related a story of traveling from New York to St. Louis for the purpose of committing a robbery; that he stopped in Alton, Illinois, on December 16th, the same day of the robbery, and purchased a gun; that he also purchased a holster and some ammunition. That he traveled from Alton along Highway 67 and went down to the River Roads Shopping Center, and there he observed, or, as he said, cased the Savings and Loan Assocation in that Shopping Center. This was in the early part of the afternoon. And that after having done this, he traveled to the Northland Shopping Center, found another Federal savings and loan association located in that shopping center, and looked it over, and finally decided that the River Roads, the one he had looked at first, was best, so he traveled back to this area, parked his car near the Savings and Loan Association, and went inside. He [377] related that there was a man and a woman present inside, apparently employees, and that he inquired initially about a loan, and had a little discussion with the male employee in the savings and loan; that in a short time he took the gun which he had concealed in his coat pocket, announced that this was a holdup. During this time some customers, one, I believe, with some children, came in. He had the male employee give him the money

from the cash drawer, and he also got Traveler's Checks. Then he herded the people who were there into a back room, told them to remain for, as I recall, he said twenty-five minutes, and then he ran out the front door of the Savings and Loan Association. He went into his car and

drove out of the parking area.

He said that as he was driving out of the parking area he saw behind him a police car, and thinking that the police car was after him, he, in his words, panicked and drove off very hurriedly. Perhaps a half mile down the road he hit an automobile, or something, and then continued on toward Alton, Illinois, to a point where he was arrested after hitting a tree with the car, by an officer of the Alton Police Department.

Q Now, sir, during the time that he was talking to you and relating to you the events about which you have [378] just testified, did he talk to you in a logical or

illogical manner?

A' No, sir, he was responsive to questions that were asked of him.

Q Was his conversation coherent or incoherent?

A It was very coherent.

Q And, sir, can you tell us whether or not he appeared to you to be under any stress or strain at that time?

A Not any undue amount of stress or strain, under the circumstances of having just been arrested and having had an accident in the automobile.

Q Now, sir, can you tell us whether or not you have an opinion as to whether the defendant was sane or insane at that time?

A I have no reason to think that he was other than normal at the time I was talking with him. He gave no indication to me in any way that would lead me to believe otherwise.

MR. BARSANTI: If the Court please, I move that

answer be excluded as not being responsive.

THE COURT: Say whether you would consider him to have been sane or insane.

THE WITNESS: Sane.

MR. MARTIN: Thank you, sir. If the Court please, may I approach the bench?

THE COURT: Yes. Come up, Mr. Barsanti.

(Thereupon a colloquy ensued among the Court and counsel, at the bench, out of the hearing of the reporter.)

## [379] QUESTIONS BY MR. BARSANTI

Q Mr. Peet, did you make any reports as to your activities in connection with the investigation of the robbery of the Roosevelt Federal Savings and Loan on December 16?

A Yes, sir.

Q What reports did you make?

A Reports that reflect the interviews with Mr. Kauf-man.

Q Are those all the reports you made in connection with your investigation?

A Yes, in that case.

MR. BARSANTI: I would like if we could get them, please.

THE COURT: I don't think you need those right now, Jack, to go ahead with this other part. You can get them ultimately. Go ahead with the other.

Q (By Mr. Barsanti) Well, all right, just so that it would be understood that I wouldn't be bound to not have further cross-examination of this witness.

THE COURT: Well, you will get it in time, but don't you want to interrogate him some more?

MR. BARSANTI: Excuse me.

Q (By Mr. Barsanti) Were all five persons present, the same five, throughout this interrogation of Harold [380] Kaufman?

A Yes. Initially when we first went into the room to talk, there were the three agents involved, and Chief Obertz came in, and since it was his department involved, he sat in during the interview, but more or less as an observer.

Q Were you in the room the entire time?

A I was out for a brief period.

Q How often?

A Maybe twice.

Q When Harold Kaufman left the Alton jail, did he leave in your custody?

A Yes, he did.

Q So you saw him the first time around 6:00 o'clock? A We started talking with him just before 6:00; yes,

sir.
Q What time did you arrive at the Alton Police Station?

A. I arrived at the Alton Police Department at approximately 5:45.

Q Who did you talk to first?

A When I arrived, Kaufman was being processed, and in the process at that time, I believe, of being photographed, and I talked initially with Captain Petersen of the Alton Police Department.

[381] Q Did you have reason to suspect him of being the one who had robbed the Roosevelt Federal Savings

and Loan at that time?

A Yes, sir.

Q In your interrogation of him with the other F.B.I. agents and with the Jennings police, of course, within furtherance of that suspicion and investigation?

A Yes, sir.

Q Now, did anybody else of the five, besides you, leave the room occasionally?

A I don't recall. One of them may have.

Q Was the Jennings Police Chief in the room all the time, to your knowledge?

A I believe that he was; yes.

Q You don't know of your own knowledge whether he did say something during the times that you may have been out of the room?

A No. sir.

Q Your testimony is while you were present, he didn't make any statement at all?

A Would you repeat this question?

Q Your testimony is that while you were present in the room, the Jennings Police Chief made no statements at all, had no conversations with Mr. Kaufman? He [382] merely observed you and your fellow F.B.I. agents interrogating him?

A He was observing. He may have asked an isolated question that he didn't hear the answer to, or he wasn't straight about that, he didn't understand it. But from the standpoint of question and answer, I was asking most of the questions, and Mr. Kaufman was supplying the answers.

Q Was Mr. Kaufman given the opportunity to call a

lawyer during that period of time?

A At the initial stage of the interview, I told him that he could talk with an attorney of his choice at any time he wanted, and that he didn't have to talk to us if he didn't want to.

Q Did he talk to a lawyer some time that night?

Yes, sir, he did.

When?

He called an attorney in New York.

When, Mr. Peet?

A When?

What time?

Between 8:40 and 9:30, I would guess. I don't know exactly what time.

Where did he make the call from?

A From our F.B.I. office in St. Louis.

After you brought him back to St. Louis? [383] A Yes.

Q Did you tell him he could make that call after you got your confession?

A I told him that he could make the call any time he wanted to.

Q Was it before you started talking to him?

A Yes, sir.

And did he not ask to make that call at any time before you brought him back to St. Louis?

No. sir.

Did he ask for any medical treatment at any time? At 6:15, I inquired of him if he would like to see

a doctor, because I was concerned about the swollen lip and his apparent discomfort in the chair. At that time, he declined to see a doctor, and again, perhaps thirty minutes later, I made the same request of him, would he like to see a doctor, and in each case he declined.

Q You called a doctor in when you got him back to St. Louis, did you not?

A I personally did not.

Q Some member of the F.B.I. did?

A Yes, sir.

Q Who did that?

A I'm not sure who called.

[384] Q What time did the doctor arrive?..

A During the short period that we were in the St. Louis F.B.I. office from, as I say, between 8:40 and perhaps 9:30 or 9:40.

Q Had Kaufman then requested a doctor?

A No, sir.

Q You don't know why a doctor was brought in at

that time, do you?

A Yes. I was concerned, and Mr. Morley, our Assistant Agent in Charge, was concerned over the condition of his side, and I didn't know whether perhaps he had a cracked rib from hitting the steering wheel, or whether he had hit his hip on the arm rest of the car, and before taking him into jail we wanted to make certain that there was nothing physically wrong with him that would be injurious to him either there or at a later time.

Q You did not procure this examination before you got your confession though, even though you were con-

cerned about his health?

A No.

Q That's correct from the time sequence, isn't it, sir?

A Yes, that's correct.

Q As I understand it, your testimony is there were [385] never any threats made by the Chief of the Jennings Police, to your knowledge? He may have asked an isolated question but you never heard him make any threats?

A No, sir.

Q And you afforded Mr. Kaufman the right to make a telephone call to an attorney at any time, which he did not avail himself of until you returned to St. Louis?

A That's right.

Q And the physical exam was procured by you after you returned to St. Louis?

A By a member of our office.

Q What time did you become acquainted with the possibility that there was a suspect in Alton that you should investigate for the Roosevelt Federal Savings and Loan robbery?

A It was some time after 5:00; probably between 5:15

and 5:40 in the afternoon.

Q By the way, when you arrived in Alton, was the Chief of the Jennings Police already there, or did he arrive later?

A He arrived shortly after we did.

Q Do you know when Mr. Kaufman was taken before a United States Commissioner?

A Yes, sir.

[386] Q What time?

A It was 11:00 A.M. the following morning, December 17.

Q How long did he remain in your office on the night of the 16th?

A We left the Alton Police Department at 6:00 o'clock, arrived at our office approximately 8:35 or 8:40, and while he was in the office from 8:40 until 9:40, a period of one hour, he was fingerprinted, photographs were taken of him, we sent out for food, which was brought in and was given to him, he made his telephone call to his attorney, and he was examined by the doctor.

Q After making that phone call,—excuse me. How

late did this go then?

A At 9:40 P.M., Agent Walls and I took Mr. Kaufman down to the Central Station here and placed him in the St. Louis Police Department holdover jail to hold for the United States Marshal. He was booked there, as I recall, at 9:55 P.M.

Q Following the call he made to his attorney at around, I guess somewhere around the neighborhood of 9:00 o'clock, I guess, did he request a further opportunity to see an attorney, that you heard?

A On the 16th?

[387] Q Yes.

A No. sir.

Q Were you with him all the time from the time he was brought back until you deposited him in the Central Station, Central District?

A Almost all the time, except to go into another room

and come back; almost continuously.

Q How many agents were present in the same room with him here in St. Louis?

A There may have been three or four.

Q Did he give you his correct name when you first saw him in Alton?

A He gave me his correct name; yes. He gave me

Harold Kaufman.

Q Was that the same name he had given to the Alton police? Do you know?

A I believe that initially, as I understand it, he gave

another name at the time of his arrest.

Q Had the Alton police interrogated him at all before you arrived there, to your knowledge?

A I believe not.

Q When they picked him up, they called you all?

A From a sequence standpoint while at the Roosevelt Savings and Loan, we understood that a red car had been [388] involved in a hit and run accident going north on Highway 67, and as assignments for investigation were being given out, Agent Walls and I were designated to go in a northerly direction, and it was shortly after we started that we heard over the radio that an individual had been arrested at Alton with a red car that had been involved in the hit and run. For that reason, we proceeded directly to Alton.

Q Do you normally follow up on hit and run acci-

dents? Is this normal F.B.I. procedure?

A We follow up any logical lead that may result in the solution of a bank robbery, or any other investigation

that we are conducting.

Q Did you have any though or knowledge that this had been the vehicle, or any evidence this had been the vehicle that the robber had used? Something attracted you to it, Mr. Peet. You don't hear something about a hit and run man being picked up, and follow it up?

A The logical time sequence, and a highway going out of town as an escape route made it a logical thing to follow up.

Q You radioed ahead to the Alton Police that you

were coming?

A No, sir, I did not.

Q You heard it on your radio, and you then proceeded [389] directly to Alton for the purpose of furthering this investigation?

A I was instructed by radio to proceed there; yes, sir.

Q At the time you arrived in Alton, was he being held for the F.B.I. at all, or was he being held on a traffic charge in Alton, to your knowledge?

A He was in the custody of the Alton Police Depart-

ment at the time I arrived.

Q He was not being held for the F.B.I.?

A No, sir.

Q When you first saw him, did you inform him who you were and what you wanted to talk to him about?

A Yes, sir, I did. At the beginning of the interview I showed him my credentials and introduced him to each of the other members in the room.

Q Do you know whether his car had been searched at

that time?

A I do not; no. I believe not.

Q What time did you get your confession?

A He completed his story of the day's happening at roughly 6:40 P.M.

Q What happened between 6:40 and 8:30, when you left Alton?

[390] A We left Alton at 8:00 o'clock. Between 6:40 and the time we left, right after 6:40 I was out of the room in order to talk with Assistant Agent in Charge Morley, relay the details as they had progressed to that point with him. He telephonically tried to contact Mr. Murrell in the United States Attorney's office, and was unable to do so. He telephonically contacted Mr. Fitz-Gibbon, the United States Attorney, and related the facts to him. It was at this time that Mr. FitzGibbon authorized Federal process against Kaufman. As soon as I had that knowledge, I returned and told Kaufman that Fed-

eral charges were going to be filed the following Monday before the United States Commissioner charging him with the robbery of the Roosevelt Savings and Loan Association. Then there was a slight delay while several witnesses to the robbery were being contacted and driven, or driving themselves to the Alton Police Department for purposes of a show-up where they could view the defendant to determine whether or not he was the individual who had committed the robbery. This took a little time, and as soon as that was concluded, and as soon as we could, we departed for St. Louis.

Q What time was he placed under arrest by the United

States Government?

A I never said specifically, "Mr. Kauman, you are [391] under arrest." I did tell him that Federal charges were going to be filed, and that would be between 6:40

and 7:00 o'clock.

MR. BARSANTI: I have no further questions of this witness at this time, Your Honor. One last question, Mr. Peet. Did you inquire as to whether there was a United States Commissioner in the Alton area, before whom Mr. Kaufman could be taken? Did the F.B.I. make any attempt to locate a Commissioner at that time?

A We brought him back to St. Louis on the instruc-

tions of the United States Attorney.

## QUESTIONS BY MR. MARTIN

Q Mr. Peet, I believe you said that you went before the United States Commissioner here in this District at 11:00 A.M. on December 17, 1963, with Mr. Kaufman?

A Yes, sir.

Q Now, the oral statement that he gave you on December 16, 1963, was that subsequently reduced to writing?

A · Yes, sir, it was.

Q When was it reduced to writing, sir? A On the afternoon of December 17.

Q. And was that statement, was that statement which was reduced to writing, subsequently signed by Mr. Kaufman?

A Yes, sir.

[392] Q When was that signed?

A The afternoon of December 17.

Q That's after you had been to the Commissioner?

A Yes, sir.

MR. MARTIN: No further questions, Your Honor, as far as the foundation is concerned.

THE COURT: I want this off the record.

(Following a discussion off the record, Court was adjourned until Thursday morning, August 27, 1964, at 9:30 A.M., at which time the further following proceedings were had before the jury:)

THE COURT: Are you ready to proceed, Mr. Martin? MR. MARTIN: Yes, Your Honor. I will call Agent Peet back.

## GEORGE M. PEET,

having previously been sworn, resumed the witness stand and testified further in behalf of the government in rebuttal as follows:

## DIRECT EXAMINATION (Continued)

#### BY MR. MARTIN:

Q Will you state your name, please, sir?

A George M. Peet.

- Q And are you the same George M. Peet who was testifying at the recess of Court yesterday evening? [393] A I am.
  - Q Sir, you understand that you are still under oath?

A Yes, sir.

Q Now, sir, yesterday I believe you testified that you saw the defendant, Harold Kaufman, on December 16, 1963?

A Yes, sir.

Q Where did you see him, sir?

A At the Alton, Illinois, Police Department.

Q And will you tell us who else was present, sir?

A At the time we were talking with Mr. Kaufman, there was Chief Obertz of the Jennings, Missouri, Police Department, Sgt. Zlotopolski of the Jennings Police Department, Special Agent Walls and Special Agent Hanes, both of the F.B.I.

Q Sir, about how long were you at the Alton Police

Department while Harold Kaufman was there?

A From approximately 5:50 P.M. until 8:00, P.M.

when we departed from Alton.

Q Now, sir, during the time that you were there, and the other gentlemen whom you have named were present, did you or any of them make any promises to Mr. Harold Kaufman?

A No. sir.

Q Did you, or any of the other persons present, make any threats toward Mr. Harold Kaufman?

A No. sir.

[394] Q Did you, or any of the other persons present, hold out any inducement for Mr. Kaufman to talk with you?

A No, sir.

MR. BARSANTI: If the Court please, I will object to this line of questioning as being outside of anything—there's been no foundation laid for it. Further, it is getting into an area where the questions are leading; not competent evidence for any matter before this Court at this time. We are getting into this area, statements were made back and forth. Any evidence on that we object to at this time.

THE COURT: I don't think that the question as propounded is objectionable. And even if it were an objec-

tion, it was late, so it is overruled.

MR. MARTIN: You may answer, Agent Peet.

A I thought that I did. Would you restate the question, please?

MR. MARTIN: Would the reporter read back, please?

THE COURT: Well, just read the answer.

(Thereupon, the answer was read by the reported, as follows:

A "No, sir.")

Q (By Mr. Martin) Were you able to observe his actions during the period of time when you were with [395] him in the Alton Police Department?

A Yes, sir.

Q Now, sir, can you tell us whether or not he was, appeared to you to be nervous at times, sir?

A He was slightly nervous; yes, sir.

Q Now, sir, will you tell us what, if anything, was

giving him any nervous concern at that time?

A I believe that he was concerned over the fact that he had just been arrested. He was slightly nervous, I believe, and concerned over the fact that because of the automobile accident and the automobile hitting the tree he had damaged his lower lip, which was swollen, and he had hit his side. He appeared to be uncomfortable in the chair. He moved back and forth every once in awhile to ease that discomfort.

MR. BARSANTI: If the Court please, I move that a portion of that answer, other than the last part which described his apparent physical condition, be excluded. His answer apparently is what he thought the other man, Harold Kaufman, believed or felt. There is no foundation for that opinion.

THE COURT: It will be overruled. As I understand

it, he responded on what he observed.

Q (By Mr. Martin) Now, sir, will you tell us what [396] were the subjects or topics of the conversation that you heard?

A The discussion centered primarily around Mr. Kaufman's activities of December 16th, and a few days before, beginning with activities in New York City, in Alton, Illinois, in St. Louis, Missouri, up until the time of his arrest, and our meeting at the Alton Police Department.

Q Now, sir, can you tell us whether or not it appeared to you that his conversation was logical or illogical?

A It was logical.

Q And, sir, can you tell us whether or not it appeared to you that his conversation was coherent?

A It was coherent.

Now, sir, were you able to understand the things that Mr. Kaufman related?

Yes, sir.

Now, sir, from your observations of Mr. Kaufman during that period of time, and from the conversations of Mr. Kaufman that you heard, were you able to form an opinion as to whether or not Mr. Kaufman was sane or insane at that time?

If the Court please, I will object. MR. BARSANTI: There has been no foundation laid for that question. Before a non-expert witness can answer such there's got to [397] be a foundation of extensive observation laid.

THE COURT: I think he can answer as a layman on the basis of his observation over whatever period of time it was.

MR. BARSANTI: May we approach the bench on that, Your Honor?

THE COURT: Yes.

(Thereupon, a colloquy ensued among the Court and counsel, at the bench, out of the hearing of the jury and the reporter.)

MR. MARTIN: Your Honor, I will withdraw the last question.

THE COURT: Okay.

(By Mr. Martin) Sir, how long were you in the presence of Mr. Kaufman on December 16, 1963?

A All together from approximately 5:55 P.M. until

9:55 P.M., a period of four hours.

Q Now, sir, during that period of time, did you observe anything which, in your opinion, was unusual about the actions of Mr. Kaufman?

No. sir.

Sir, will you tell us how he appeared to you?

He was responsive to questions asked of him. He asked intelligent questions of those present, both at the [398] Alton Police Department, while we were en route from Alton to St. Louis, while we were in the St. Louis F.B.I. office, and also at the time he was being booked at the St. Louis Police Department holdover jail. His questions were intelligent, responsive, and to me, reflected considerable thought.

Q Now, sir, at that time, did he appear to you to be

sane or insane?

MR. BARSANTI: If the Court please, again, the same objection to that question. There is no foundation laid.

THE COURT: Overruled. He may answer.

MR. MARTIN: You may answer, sir.

A Sane.

Q (By Mr. Martin) Did you subsequently talk to Mr. Kaufman on December 17, 1963?

A Yes, sir.

Q And where did you have that conversation with him, sir?

A In the City Jail here in St. Louis.

Q Was that before or after he went before the United States Commissioner?

A It was after he had appeared before the United States Commissioner.

Q Did you go with him to the United States Commis-[399] sioner's office?

A Yes, sir.

Q. And did you observe him in the United States Commissioner's office?

A Yes, sir.

Q Did you observe the proceedings in the United States Commissioner's office?

A I did.

Q Now, at that time, did you hear any conversation of anyone with Mr. Kaufman?

A I did.

Q Did you hear Mr. Kaufman say anything?

A Yes, I did.

Q About how long were you in the Commissioner's office, the proceedings in there, about what length of time, sir?

A I would imagine overall a period of ten or fifteen minutes at the most.

Q Will you tell us what you observed about Mr. Kaufman at that time?

A Mr. Kaufman came into the room, sat down, as he was instructed, in the chair designated for him. He listened attentively to statements made to him by the United States Commissioner. When asked if he understood these statements, he replied in the affirmative. He asked, I be [400] lieve, one or two questions of the Commissioner for clarification. These questions appeared to be intelligent and on point with respect to his appearance at that time.

Q Now, sir, after leaving the United States Commissioner's office, I think you mentioned you saw him again

in the City Jail?

A Well, actually on four other occasions.

Well, I mean on that same day, December 17th?

A Yes, sir.

Q About how long were you with him at that time, sir?

A I would imagine in the neighborhood of two hours.

Q Will you tell us what happened at that time, sir,

if anything?

A Well, during that period, we discussed at length his activities beginning in New York about the 14th of December, his travel from there to Alton, Illinois, and on to the area of the River-Roads Shopping Center, and into

another shopping center area nearby.

MR. BARSANTI: Just a moment. May I interrupt? If the Court please, Mr. Peet is going into contents of these conversations. The conversations took place after Mr. Kaufman had been in touch with an attorney. They are completely outside of any evidence which can be presented in this Court. I object to any further testimony [401] along this line as to any contents of any statements made by Mr. Kaufman. He should not have been talking to him.

THE COURT: I think I am going to restrict you to conversations, and not the contents of them. Go ahead.

Q (By Mr. Martin) Mr. Peet, as I understand the ruling, Your Honor, if I am incorrect, let me know, please. I think the Court is restricting you to the subject matters that were discussed, not the things that were said. Is that correct, Your Honor.

THE COURT: Well, I think generally about conversations, and rather than contents of conversations, on what his responses were. Interrogations about his activities on certain days, and then he responded. Go ahead.

THE WITNESS: He, in my discussion with him, discussed his activities of December 16. He discussed some of his background activities as to his concern over matters

affecting him.

MR. BARSANTI: If the Court please, the same objection again. Mr. Bet is going into contents of these conversations.

THE COURT: I don't think—this is certainly in such general terms, and if it gets particular, I will, with or

without an objection, I will strike it.

Q (By Mr. Martin) You may complete your answer, sir.

[402] A We discussed matters over which he was concerned affecting him in New York City. We discussed matters in which he was concerned involving his activities in Indiana and in Pennsylvania. We discussed his activities with respect to Pat Scott, his girlfriend, some of her background, her associates, his associates, and many of the problems that he faced at that particular time.

Q Now, sir, part of this discussion was in the form

of questions and answers?

A Yes, sir.

Q Was he responsive to the questions that were asked him?

A Yes, sir, he was.

Q Was his conversation and discussion logical or illogical?

A It was logical in every respect.

Q Was his discussion and conversation coherent or in-

A It was coherent.

Q Did he appear to be nervous in any manner?

A No, not overly nervous at all.

Q Now, sir, were you able to observe whether or not there had been a change in Mr. Kaufman from the previous evening when you had seen him? [403] A The only noticeable change was a slight change in his physical condition I referred to of his lips and his side.

Q Now, sir, on how many other occasions did you converse with Mr. Kaufman?

A Four other occasions.

Q. Will you tell us when those occasions were?

A On December 18, on December 20, on January 24,

and on January 27.° -

Q Now, sir, all together, well, can you tell us how long on each one of those occasions you were in his presence and had conversations with him?

A I think probably-

MR. BARSANTI: Excuse me just a minute. If the Court please, might I have just a moment?

THE COURT: Sure.

MR. BARSANTI: The Court file. If the Court please, we will object to that question of any contacts Mr. Peet may have had with this defendant. Defendant had counsel. These contacts were without the consent of counsel, were not right, and he had no business making them of any

kind. He should not have been talking to him.

MR. MARTIN: If the Court please, it is the government's position that the agent had talked to him. How-[404] ever, we are not going into the conversation, the subject matter. Counsel's objection possibly might go to the point of excluding what was said during the course of the conversations. However, that would not go to the point of ruling out any observations which the agent might have had of the defendant at that time. In other words—

THE COURT: I know what your point is.

MR. MARTIN: . Thank you.

MR. BARSANTI: It is clear the government is trying to use the contact for evidence in some sense. The contacts were improper. They should not have happened. They cannot be used for any evidence.

THE COURT: They are not being used for evidence of the charge. They are used as rebuttal to the defense.

MR. BARSANTI: If the Court-please, it becomes all of the government's case once that issue is in. It comes in in procedural rebuttal. It doesn't make any difference.

They can't go do something they are not permitted to do, and then turn around and use it.

THE COURT: I will overrule the objection.

(By Mr. Martin) Mr. Peet, on December 18, how

long were you in Mr. Kaufman's presence?

I would guess in the neighborhood of an hour to two hours.

Q And did you hear any conversation at that [405] time?

Yes, sir. A

Were you able to observe him at that time? Q

Yes, sir. A

What was the next date that you were in his presenc4?

On December 20th.

Did you have any conversation with him at that time?

A Yes, sir.

Q Were you able to observe him?

·A Yes, sir.

And when was the next time—How long? Did you tell me how long you were there December 20th?

A December 20th I would guess again in the neigh-

borhood of, oh, an hour.

Q When was the next time you were in his presence?

A I did not see Mr. Kaufman again until January 24th, when he requested to see me.

You say he requested to see you on January 24th?

Yes, sir. A

Q Did you see him?

Yes, sir. A

And how long were you in his presence?

Approximately forty-five minutes on that occasion. [406] Q And did you see him again?

Yes, sir, on January 27th.

And about how long were you in his presence at that time?

A I would guess again in the neighborhood of an hour to an hour and a half.

Q. And on these last two occasions, you had conversations with him?

A Yes, sir.

Q Were you able to observe him?

A Yes, sir.

Q Now, sir, on these subsequent occasions from December 18 to January 27, on each of those occasions when you saw him, will you tell us whether or not you observed anything about him which was different that what you observed on December 16, 1963?

A In connection with any discussions that I had with him, I saw no change in the way he asked questions, the way he answered questions, the apparent deep thinking processes he was going through in connection with the

problems that faced him at that present time.

MR. MARTIN: No further questions.

#### **CROSS-EXAMINATION**

#### BY MR. BARSANTI:

Q Mr. Peet, you filed reports on all of your activities

[407] in connection with what you testified about?

THE COURT: Give Mr. Barsanti those reports. Let the record show that the Court has directed the District Attorney to give Agent Peet's reports to various meetings. It is going to take you five or ten minutes to read those, Mr. Barsanti, so I will let the jury go out and sit back there. As soon as you have looked at them, will you let me know so I can come back?

MR. BARSANTI: Yes, sir.

(Following a brief recess, Agent Peet resumed the witness stand, and the further following proceedings were had:)

THE COURT: Are you ready, Mr. Barsanti?

MR. BARSANTI: Yes, Your Honor.

Q (By Mr. Barsanti) Mr. Peet, you have testified that you had some contact with the defendant, Harold Kaufman, on a number of different occasions, 16th, 17th, 18th, 20th of December, January 24, January 27. You indicated that there was some concern about a Pat Scott; is that correct?

A Yes, sir.

Q Was this on more than one occasion?

A Yes, he mentioned it on more than one occasion.

Q Do you have a medical degree?

A No, sir.

[408] MR. BARSANTI: I have no further questions.

THE COURT: All right. Anything else?

MR. MARTIN: No further questions.

THE COURT: All right. Thank you. You may step down.

#### [410]

### FRANKLIN J. WALLS,

being first duly sworn, testified in behalf of the government in rebuttal as follows:

#### DIRECT EXAMINATION

#### BY MR. MARTIN:

Q State your name, please, sir.

A Franklin J. Walls.

Q Mr. Walls, what is your business or occupation?

A I am a Special Agent of the Federal Bureau of Investigation.

Q How long have you been with the Federal Bureau of Investigation?

A Approximately fourteen years.

Q To what office were you assigned on December 16, 1963?

A St. Louis, Missouri.

Q On that date, did you have occasion to participate and assist in the investigation of the robbery of the Roose-[411] velt Federal Savings and Loan Association, located in the River Roads Shopping Center, in St. Louis County?

A. Yes, sir.

Q During the course of that investigation did you have

occasion to see the defendant, Harold Kaufman?

A Yes, sir.

Q Will you point him out to us, please, sir?

A He is the third gentleman directly ahead of me.

Q Seated at the table?

A Yes, sir.

MR. MARTIN: If the Court please, may the record show the witness is indicating the defendant?

THE COURT: The record will so show.

Q (By Mr. Martin) When did you first see Mr. Kaufman?

A It was at the Alton, Illinois, Police Department.

Q What date, sir?

A On December 16, 1963.

Q Can you tell us approximately what time it was that you first saw him?

A It was approximately 5:55 or 6:00 P.M.

Q Do you recall who, if anyone else, was present at that time?

A Yes, sir. Special Agent George Peet and I had gone [412] to the Alton Police Department and we were together at the time we initially saw the defendant.

Q How long were you with him at the Alton Police

Department?

A Approximately from about 6:00 o'clock until about 8:00 or 8:30.

Q Did anyone come in while you were there?

A Yes, sir. There were two officers from the Jennings Police Department, namely Chief John Obertz and Lt. Zlotopolski, and also Special Agent from the Alton, Illinois, area, Bob Hanes was also there.

Q All right, sir. Will you tell us about how long you remained in the presence of Mr. Kaufman while you were

at the Alton Police Department?

A Well, from the time that I initially got there until

we left at around 8:30 P.M.

Q And where did you go when you left the Alton Police Department?

A We came to the St. Louis office of the F.B.I.

Q Was Mr. Kaufman with you at that time?

A Yes, sir.

Q While you were in the St. Louis office of the F.B.I., how long were you in Mr. Kaufman's presence?

A Well, the entire time he was there, until about 9:30,

[413] 9:45; something like that.

Q Now, sir, referring back to the time that you were in the Alton Police Station, did you hear any conversations with Mr. Kaufman?

A Yes, sir.

Q And did you hear Mr. Kaufman participate in any conversations?

A Yes, sir.

Q Sir, without telling us what Mr. Kaufman said,

will you tell us the subjects that were discussed?

MR. BARSANTI: Just a minute. If the Court please, I renew the same objection that's been made before. There's been testimony concerning the subject matter of these discussions that may go beyond physical observation of the witness.

THE COURT: I am going to sustain the objection, except generally they may discuss, he may state what the subjects were, and members of the jury, I want to advise you at this time that it may be necessary for me to strike some testimony. If it is, you are not to consider it at all at the time that you deliberate. Now, I don't know that it will be, but if it ever becomes necessary, as I told you in the general charge earlier, if the Court ever strikes testimony and orders it stricken from the record, you are [414] not to consider it at the time of your deliberation.

MR. MARTIN: You may answer, sir. But are you clear as to the question and the restrictions by the Court

on your answer?

THE WITNESS: I think so. As I recall, Mr. Kaufman made reference to the fact that he was in trouble in New York.

MR. BARSANTI: If the Court please, my objection goes to that type of conversation.

THE COURT: Yes. It will be sustained.

MR. BARSANTI: And I will ask that it be stricken.

THE COURT: It will be stricken.

Q (By Mr. Martin) Sir, was there any discussion about Mr. Kaufman's activities prior to his arrival in St. Louis?

A Yes, sir.

Q Was this more or less in question and answer form?

A Well, if I recall right, an effort was made to determine his activities for that date prior to beginning that—Mr. Kaufman did make reference to prior activity.

MR. BARSANTI: If the Court please, I will move that the latter portion be stricken as to what Mr. Kauf-

man made reference to.

THE COURT: No. I think this is generally enough [415] to—so I will overrule the objection.

: MR. BARSANTI: All right.

- Q (By Mr. Martin) Now, sir, in the discussion of prior activities, were the responses made by Mr. Kaufman to questions logical or illogical?
  - A They were logical.

    Q Were they coherent?

Q Were the A Yes, sir.

Q Were they in detail?

A Yes, sir.

Q Now, sir, I'll refer to the events of the day of December 16, 1963. Were those events discussed?

A Yes, sir.

MR. BARSANTI: If the Court please, I will object to this.

THE COURT: It will be sustained as to the question

and the answer, and both will be stricken.

Q (By Mr. Martin) Was a discussion about December 16, 1963—

MR. BARSANTI: If the Court please, I will object to that.

THE COURT: You may answer that question.

THE WITNESS: Would you repeat the question, please?

Q (By Mr. Martin) Was there a discussion about

[416] December 16, 1963?

A Yes, sir.

Q Did you hear questions being asked of Mr. Kaufman?

A Yes, sir.

Q Did you hear answers given by Mr. Kaufman?

A Yes, sir.

Q Did Mr. Kaufman's answers appear logical or illogical?

A They appeared logical to me.

Q Did they appear to you to be coherent or incoherent?

A They appeared to be coherent.

Q Were they in detail?

A Yes, sir.

Q Were you able to observe whether or not Mr. Kaufman appeared to you to be nervous, or not to be nervous?

A In my epinion, he was—he appeared to be slightly

nervous.

Q Sir, was there any indication as to what was caus-

ing his nervousness as of that time?

A Well, it was my understanding that he had sustained an accident with an automobile, which had caused a cut on his lip, plus the fact that he had appeared at the police station in connection with that.

Q Sir, can you tell us what, if anything else, you [417] observed about Mr. Kaufman and his actions as

of that date, at that time?

A Well, he appeared to be responsive to the questions that were asked him. His answers appeared to be intelligent answers as if he were trying to explain his activities.

Q Now, sir, after you left the Alton Police Department with Mr. Kaufman, were you together at that time?

A At the time we left the Alton Police Department, I was with Mr. Kaufman; yes, sir.

Q In the same automobile?

A In the same automobile; yes.

Q And who, if anyone else, was in that automobile?

A Special Agent George Peet and the Assistant Special Agent in Charge, Donald Morley.

Q Did all of you ride together back to the St. Louis office of the Federal Bureau of Investigation?

A Yes, sir.

Q And during that time were you able to observe Mr. Kaufman?

A If I might explain, I was driving the automobile in the front seat alone, and Mr. Kaufman was in the rear

seat between Mr. Morley and Mr. Peet. I was able to observe him in the back seat as I was driving, by referring to the inside rear view mirror.

[418] Q Did you hear any conversation at that time?

A No, sir, I didn't.

Q Now, sir, what happened after you arrived at the Federal Bureau of Investigation office here in St. Louis, Missouri?

A Well, upon our arrival at the St. Louis office, we processed him. That is, by fingerprinting him and taking his picture, and then in view of the injury or cut on his lip, we summoned a doctor to come and examine him.

Q What about food, sir?

A He was given food while he was here—I mean at the office, of his own choice.

Q Now, sir, did Mr. Kaufman give you any difficulty in the processing of him at the office?

A No, sir,

Q He cooperated in the taking of the photographs and the fingerprinting?

A Yes, sir.

Q About how long was he in the office?

A I could estimate approximately some forty-five minutes to an hour.

Q And did I ask you what time it was that you first saw him in Alton on December 16, 1963?

A Yes, you did. It was approximately 5:55 or 6:00 P.M.

[419] Q Now, after he arrived at the FB.I. office here in St. Louis, will you tell us what, if anything, you observed about his nervous condition?

A Well, he did not appear to be very nervous on his arrival in our office. He appeared to be still in the frame of mind of trying to answer questions and to assist in the events of that day.

Q Now, sir, from the time—strike that, please. Where did Mr. Kaufman go, or where was he taken after he was in your office?

A He was taken to the St. Louis Police Department, where he was turned over to their custody.

Q Now, sir, from the time that you observed him in Alton until the time that he left your office, did you observe anything about Mr. Kaufman, or of his actions, which appeared to you to be unusual?

A No, sir.

MR. BARSANTI: If the Court please, I will object to the question as being vague.

THE COURT: No. He may answer

THE WITNESS: No, sir.

Q (By Mr. Martin) Now, sir, can you tell us whether or not Mr. Kaufman, at that time appeared to you to be sane or insane?

[420] MR. BARSANTI: If the Court please, I will object to that question. There is no foundation laid of detailed extensive observations for some period of time by this witness-to answer that question, that is required for a lay witness.

THE COURT: I will let him answer it It will be

overruled.

MR. MARTIN: You may answer, sir. THE WITNESS: Yes, he appeared sane.

Q (By Mr. Martin) Now, sir, will you tell us the

basis for that opinion?

A Well, on the basis of my fourteen years' experience as a special agent of the F.B.I., the man appeared to be sane.

### [437] CLOSING ARGUMENT IN BEHALF OF THE GOVERNMENT

MR. MARTIN: May it please the Court, gentlemen of the defense, Madam and gentlemen of the jury: At this point, we have come to the closing arguments which the Court mentioned to you in the general instructions that were given to you Monday. But before starting into the closing argument, I would like to thank you on behalf of [438] the Government for your attendance here, and I noticed that you have been very attentive and that you have heard all the evidence, and it is appreciated by the Government.

As counsel for the Government, I have the opportunity of giving you the first closing argument. We both, Mr. Barsanti and I, will have the same amount of time. Mine will be divided in half. I will open, Mr. Barsanti will give you the closing argument on behalf of the defendant, and then I will have time to answer some of the things that he might tell you.

Now, at this time, I might mention to you something that the Court said in its original instructions Monday morning, that what I might say to you now, what the opposing counsel might say to you should not be taken as evidence, but is our version of what the testimony and the evidence has been, and you should take it as such and use it for whatever assistance it might be to you in the course of your deliberations,

At the beginning of the case, I mentioned to you what the charge was that had been brought against the defendant by means of the indictment, which I will read to you

again, and it reads in substance as follows:

That on or about the 16th day of December, 1963, in St. Louis County, in the State of Missouri, within the Eastern Division of the Eastern District of Missouri. [439] Harold Kaufman, the defendant, did, by force and violence, and by intimidation, take from the presence of another, to wit, Lloyd A. Woollen, Manager of the Roosevelt Federal Savings and Loan Association, certain money, to wit, the sum of three hundred twenty-eight dollars and fifty cents, more or less, in lawful money of the United States, belonging to, and in the care, custody, control, management and possession of said Roosevelt Federal Savings and Loan Association, a Federal savings and loan association authorized and acting under the laws of the United States, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; that in committing the above offense, he, the said defendant, did put in jeopardy the life of the said Lloyd A. Woollen by the use of a dangerous weapon and device."

Now, that is the charge which the government has proven to you. As a matter of fact, you recall the opening statement of the defense counsel, and the other events of the trial which indicate that the defendant does not

contest the fact that he committed the act alleged in the indictment. The only issue now remaining in the case is whether or not the defendant was legally sane, legally

responsible for his criminal act on that date.

Having admitted the commission of the crime, ordinarily I would not have to go into the details of the acts [440] which he committed at that time, but, however, on the question of sanity, and I would like to bring this to you and remind you it's a question of his sanity on December 16, 1963. Was he legally sane on that date? That is the question for you to determine. You may consider all of the evidence which has been introduced, but you come right back to the focal point, was he legally sane and criminally responsible for his act on December 16, 1963?

In order to determine that, you must examine what he did, how he did it, what were his actions, what was his condition at that time. You may also consider acts previously, and acts after December 16, but you come right back to the point of what was his condition on December

16, 1963.

Now, we have introduced evidence showing that the automobile he was driving on December 16. 53, came from New York. Here is Exhibit 8, the R. Contract for that automobile in the name of Arthur Cooper. Here is a traffic ticket, City of New York, showing that the automobile was in New York City. I am trying to find the date on this ticket. I had it at one time—on December 14 of 1963. We showed you receipts for gasoline along the route between New York to St. Louis. We have here a receipt from the Western Union showing telegraphing of the money from Harrisburg, Pennsylvania, to New [441] York City, to Mrs. Patiricia Scott, on December 15th.

These are some of the things showing what he was doing when he was coming from New York to St. Louis in this automobile, and when he gets to the vicinity of St. Louis, he stops in Alton, Illinois, and he uses the name Arthur Cooper, the same name that is on the rental contract, for the purpose of purchasing a revolver which was registered in the name of Arthur/Cooper with the gun sales, company.

At that time he displayed no nervousness. His conversations with the salesman at the time he was making that purchase appeared to the salesman to be perfectly normal. I think there was some testimony that he was purchasing it for the purpose of a gift to his son, but all of that

activity so far seems perfectly normal.

And this is the gun which he bought in Alton, showing that he had the purpose of committing a robbery some time along the route. And if you recall the testimony of Patricia Scott, she said that he left New York for the purposes of "pulling a job" was her terminology. She thought he was flying, but, however, he was driving the automobile and got to Alton, he purchases the gun, he goes to the Roosevelt Federal Savings and Loan Association in the River Roads Shopping Center, and what does he do there?

He goes to Mr. Lorenz, one of the tellers. He talks perfectly coherent, logical, to her about the purchase of [442] Travelers' Checks, offers to buy the Travelers' Checks with a personal check of his own. When that is refused, he continues his conversation and starts to talk about a G.I. loan, at which time he is then in conversation, or gets into conversation with Mr. Lloyd Wollen. And he discusses the loan, mentions the fact that he is from out of town, has been recently transferred here by an employer, the Western Electric Company; that he's transferred from Pittsburgh, and that he wants to get a loan. He has the G.I. approval, all of which would be perfectly normal, a perfectly normal story for anyone who had come from out of the state and been transferred by his employer here.

Then he discusses the opening of a savings account and during that discussion he pulls the gun and demands the money. Now, when he pulls the gun and demands the money, does he show any nervous excitement, agitation, any of that? Mr. Woollen said no. Apparently he was cool, calm and collected, and I would say that he was, at that time, displaying the cool, calmness and the regular

attitude and activities of a professional robber.

He demands the money, he goes to the window, and Mr. Woollen has given him the money, and he takes these two

packages of Travelers' Checks. Along about this time, a woman customer enters the savings and loan association office and shortly after the woman enters, Mr. Dedert and [443] his family enter, and up to that point the defendant has shown no nervousness whatsoever, and his only concern at that point was that he did not want the children,

the three children; to get hurt.

And what does he do? He calmly directs them to an office in the back, which any ordinary robber would do. They go to this office that has plate glass windows on the outside. He recognizes that people on the outside could see him and what was going on, so he directs them to a supply room, all of which would be the normal activity of a robber. And he does not show any hurriedness in his movements until the Dedert family comes in, and naturally, now, we have Mr. and Mrs. Dedert, the three children, and the lady customer, along with the two employees of the loan association. And what would the normal robber do at that point?

It is beginning to get crowded in the office, and it is time to get out. I have the money and I have the Travelers' Checks, and it is time to get out, and you are rushing to get out, and that is the only display of nervousness seen

at that time.

But I call to your attention one factor, that twice he made the statement, "I don't want the children to get hurt," which indicates an element of normalcy. In other words, any normal individual would not want children to [444] get hurt. It shows that he is concerned. He knows what he is doing at that time. He knows the possibilities. It shows that he was completely in his faculties at that time.

He then leaves. He goes to the highway leading to Alton, Illinois, and some of you possibly live in that area or that section of the county, or have traveled that road, and I say to you that as jurors you can make use of your own knowledge of general information, and when you are deliberating whatever knowledge you have of general information you don't necessarily have to leave that outside of the jury room but decide the case only on the evidence which you have heard.

He goes to Alton as an escape route. Unfortunately, he has a slight accident on the way. The Alton police are alerted to look for a hit and run driver, and they intercept him as he enters Alton. He does not stop when signaled, and he has an accident then. He talks to the police officer. He talks to him logically, coherently, gives him the information, though it is false information, about his name. He is taken to the police station. He is there for a number of hours, and he talks to various officers and agents. He does everything logically as you would expect any normal individual to do it.

Now, in determining his condition as of that date, you have heard the testimony as to what he did and how he [445] did it. You use that testimony to assist you in determining how he was on that day. No medical person examined him on that date, so we have to rely upon the testimony of witnesses to establish his condition as of

that date.

The only one that could possibly give, or attempt to give any opinion as to his condition on that date was Dr. Waitzel, and Dr. Waitzel examined him December 30th, of 1960, approximately three years before the happenings of this particular crime. At that time, he merely found that he was psychoneurotic. He was not a psycho, as they term it, but merely psychoneurotic, which is a nervous individual, and nervous individuals are responsible for their crimes, though there was very little of any display of nervousness on December 16, 1963.

Now, that is the question, the question of sanity, and I ask you to determine the question of sanity as of December 16, 1963, and when you consider all the evidence which has been introduced as to his history before and after December 16, along with his activities on December 16, I am sure that you will find that he was responsible for his acts, he knew what he was doing, he could have refrained from doing it if he had so desired, and that you will conclude that he is criminally responsible for the

robbery.

I will conclude this portion of my argument, but I want to thank you for your attention so far, and I will be back [446] in a few minutes after Mr. Barsanti has concluded his. Thank you.

#### CLOSING ARGUMENT IN BEHALF OF THE DEFENDANT

THE COURT: Go ahead, Mr. Barsanti.

MR. BARSANTI: If the Court please, Mrs. Goodhead, and gentlemen of the jury: As Mr. Martin has told you, he has just given you his interpretation, consensus, his view of what the evidence has shown. We will now do that on behalf of the defendant, Harold Kaufman, and when we conclude, you will have received the contentions. Mr. Martin will have the opportunity to give you a contrary view of what I say and then you will have before you all material which is going to be utilized with the evidence. Of course, you are free to use anything that you heard in the course of this trial, in addition to your own common knowledge.

Martin did not mention to you, did not remind you, well, that it is the government's duty, the government's burden to prove to you beyond a reasonable doubt that Harold Kaufman was sane on December 16, 1963. We don't have to prove that he was insane. The government must prove to you that he was sane. If they fail to do

so, the verdict must be not guilty.

Now, what do we know about December 16th? We know Harold Kaufman held up the Roosevelt Federal Savings and Loan Association: We know that on that [447] date he was mentally ill and sick. What we do not know for sure, and this is your function, is how sick, and, as with so many things in life, we have to take what we can gather from other sources to make that determination upon.

Now, really, we know quite a bit about this mental condition. A lot can be reconstructed. A lot of material is before you. We know that Harold Kaufman begins with a schizoid personality in his childhood. This was confirmed by Dr. Waitzel, Dr. Weiland, the government psychiatrist. A schizoid personality in your childhood does

not mean you will at some later date become psychotic, but it does condition the personality, constitute the type of person that when the psychotic condition does come, if it does, schizophrenia is the mental disease which results.

We know that in late 1960 Harold Kaufman is found to be psychoneurotic (severe), a very low tolerance to anxiety, a low emotional stability; not psychotic—Mr.

Martin is right—but close.

We know that in February and March of 1964 after the incident, Harold Kaufman is psychotic, schizophrenic reaction, paranoid type. Now, we have a period in there, the day in question falls within that period. When did he go over the line, or was he over it all the time? This we cannot know precisely but we also have some thoughts as evidence on this.

[448] The government psychiatrist from Federal Medical Center, while they could not say for sure the condition on December 16th, it was a reasonable medical expectation that his condition was more severe on December 16 than when they examined him, after being in an institutional setting. It was Dr. Waitzel's opinion, based upon his prior examination and the condition he found Kaufman in at that time, and based upon the testimony indicating the stress and the strain, that the later psychotic condition was consistent, and that on December 16th, this man could not control his actions. He could not have a will which could control that body. This was a man that is insane in the legal sense of the word.

You heard testimony as to a condition from the government psychiatrist, a diagnosis of partial, rather stable remission. That was explained. That didn't mean cured, that meant that there had been an improvement from a more severe state. At some time before that February and March it had been more severe. As Dr.-Weiland put it, there had been some integration from a previous point when there had been a loss of touch with reality. At that stage he had some reality integration, but Dr. Weiland also said that you couldn't tell whether this would hold outside of an institutional setting. If you put him into the stress and strain again, the integration might break [449] down. He might regress. So we do know in this

period somewhere he was much more severe than even a

psychotic state found in January and February.

There were two lay witnesses, Pat Scott and Sgt. Joe Kiernan, both with extensive contacts, experience and observation of Harold Kaufman. Pat Scott, in her lay testimony did not think that he was sane. Sgt. Kiernan didn't know. He couldn't say. He found him more unusual, more bizarre, more abnormal than the people he was used to dealing with, and you have got to remember he's dealing with the criminal element on a constant basis, people normally who are below what we find in an average or norm. Harold Kaufman went beyond that.

Now, what do we know about this disease Harold Kaufman has, this mental illness? We know that it begins, it has its basis in a schizoid personality. We know that the paranoid type usually manifests itself when a man, a woman starts getting in the age range of thirty-five to forty. This is the age range Harold Kaufman had just gone through. We know that, unlike some other mental illnesses, the intellect is not impaired. Changes can be schizophrenic, paranoid type. The person is still able to reason in this peculiar illness. He is not rendered conspicuous, so that walking down the street anyone can point and say there is a schizophrenic paranoid. That-[450] doesn't mean that he is in control of his actions.

One of the characteristics though is the inappropriateness of response, as called the affect of inappropriateness, the wrong emotional response, the wrong manifestation at the time, the laugh at the funeral, that was used as an example. But we do know when that psychotic state is severe enough, even though the intellect is not impaired, even though because of the paranoid type the person is still capable of detailed planning, that the will has been destroyed. There is no control. The actions are beyond the control of the mind. What is happening is a sick and deranged something which we are not able to get into as yet, that is guiding a physical body but is not a sane will.

We have evidence that was presented to you of his activities for the month preceding December 16th, This bizarre relationship with Pat Scott, bizarre companions,

a marriage proposal by Harold Kaufman to this woman the first night he met her, constant attempts to receive affection from her to gain some self-esteem, that you recall. The lack of reality and the lack of identity of himself as a person is a strong characteristic of this mental illness disease. Striving throughout this period to buy the affection of Pat Scott, when actually she is making fun of him and taking him for the dollars that she can, [451] his assertion, "I am responsible for you," even when she says, "Forget it."

But the one bright spot in the whole thing, and that was the acceptance of the affection of the children. They apparently could accept him, but Pat Scott was taunting him. The other associates were taunting him. Pat's flunky. Who are you? A sick man, being used. Pat Scott saying, "You put ten thousand dollars down on the table and I"ll marry you." Here's a man in his drive to try to get some affection, some love which has been lacking in his childhood, a childhood deprived emotionally, trying to buy it, trying to do anything, driven to it by an internal stress.

We cannot get inside a man and determine how intense, how terrific it is. We know what stress can do to each one of us though. We experience it but we have the defense mechanism to protect ourself and to come back, but with the suffering from this illness, from this disease, this defense mechanism isn't there. That stress and that strain cannot be controlled. The actions go on without control, without restraint. There is no will. There is no mind to control it.

We know of these stormy episodes with Pat Scott when he would be in fear of losing a love object, and the hundred and eighty degree turn in the manifestation of emotions like that (snapping fingers) when he was being [452] deprived of his love object. Delusions as to greatness, of a great criminal wanted all over the country, putting on bizarre costumes. "I am the great Bobby McGill," who was his, apparently his idol. The paranoid delusions of people following him everywhere. The New York Police being interested in him not at all for one short period. They happen to have contact with him be-

cause he made contact with Jack Keller. They are not following him, but the police are down on the corner all the time.

These are all internal pressures that are working on him, these stresses. We add to this the external pressure, the episode situation with Jack Keller when there is a real belief on the part of Harold Kaufman that his life had been put, on the line. Detective Kiernan testified about when they arrested him in the phone booth, and Kaufman thought that was it that moment, that he was getting ready to be shot and killed, and Sgt. Kiernan confirmed for you that, real or imaginary, such things as contracts and that type of people involved are enough to worry about in the City of New York. So you have another external pressure.

You have then cooperating with the police, becoming an informant, and as the prosecution brought out, a very

dangerous venture. Further external pressure.

Remember, the cooperation is conditioned upon Pat Scott. She has to be protected. He is still being driven

[453] by that internal pressure throughout.

Other episodes described by Kiernan. It is a bizarre situation in the bar, public telephone, bragging about the crimes. He bragged about them to everybody. He had to make himself somebody. This drive to become a human being, person.

What do we know about the 16th precisely? Fortunately, not a whole lot right on that day, but we do know that everything leading up to the 16th, and everything on the 16th is absolutely consistent 100 per cent with his psychotic condition, with mental illness, with a schizo-

phrenic reaction, paranoid type.

Let's look at it. The government has reiterated to you and pointed to you the condition of calmness, lack of nervousness, rationality and coherence on the 16th. We have a man who can't drive an automobile well participating in an armed robbery, in a holdup, in one automobile accident, the subject of a police chase, an accident with a tree, long interrogation by the Alton Police, the Jennings Police, and the F.B.I., while injured, and he is rational, he is calm, he is unemotional.

Is this a normal reaction, or is this not the effect of inappropriateness which goes with this disease? This is not the time when you are calm or rational. Other times he was nervous, he was incoherent. This was his normal [454] way when Pat Scott or Kiernan would see him. Most of the time he was, but here, suddenly he isn't at all. What could be more consistent with what was explained to you, and never contradicted, as to a characteristic of this disease?

I submit to you that the government has not proven anything on the question before you, except to reinforce proof that Harold Kaufman was legally insane and that he could not control his actions on December 16th.

There is not one bit of evidence in here which would go to show sanity on behaf of Harold Kaufman on that date. To the contrary, it all goes the other direction. We don't have the burden of proving insanity. The government has the burden of proving sanity, and we have probably come closer to carrying that burden the other direction than they have. There is not merely a reasonable doubt, there is a large substantial doubt as to whether this man was sane on December 16th. There is no question he was sick. There is no question but that he was under stress and he was under strain, and whether it's a stress or a strain that you or I should accept or feel is important, the question is what was it doing to this sick mind? How was it manifesting itself inside there, on top of this external pressure?

I'll say to you that if you would find Harold Kaufman not guilty you would have no trouble sleeping at night, any trouble with your conscience. This is a man who is [455] engaged in activity with which you are familiar, which society doesn't tolerate. It is not meeting with the moral code, and on first blush you know it would seem to make no difference to anybody but Harold Kaufman here; no impact upon a community; no impact upon our country; and yet is this really true? What makes this country a great country? Is the exciting program in space so spectacular which excites us, which is a marvelous development? Is it the abundance of foodstuff which we have heard of before in the world? The abundance of

worldly goods we are able to enjoy through our modern managed salesmanship? Our great business institutions or great power capacity to keep the wheels of industry going? Is it a combination of those? I don't think so. Those are only manifestations that are possible because this country has some basic principles. And that falls back on probably one fundamental principle. It is a simple one, as most great things are. That is a deep, abiding conviction and respect for the rights of the individual under all circumstances, and is this deep principle which always keeps us in this country somewhat on course.

Events will happen, where that principle seems to be negated, but we eventually right ourselves, just as a ship does which is well built and well maintained, even though the waves appear sometimes to have control, but that principle of deep, abiding belief in the fundamental rights [456] of the individual requires some constant vigilance, just as that ship which is well built in the beginning must constantly be well maintained if it is going to survive.

Probably more often than any other place, a courtroom such as this one is where we have the opportunity to reinforce this basic principle, and more particularly, in a courtroom trying a criminal case, and even more specifically in a trial involving someone like Harold Kaufman. We sum up what we do in the course of that trial, what we have been doing here these last few days, as doing justice. Justice is to be done. If we do it well, if we perform justice, if justice has been done, we have enforced the basic concept which is so vital to every one of us, so vital, so taken for granted. We have enforced it. We have done our job.

I am not suggesting to you if there was a miscarriage of justice in this case, a failure of justice, that the future of this country is in danger. That would be absurd. But this is one trial out of many that is taking place around this country today, next week, the week after, the year after, and unless the greatest effort is put forth in every one of these to make sure that justice is served to the fullest extent, we do impair that liberty, that freedom of the individual which is so important, and history has

taught us well that once lost it is awfully difficult to ever

[457] regain:

Now, in this case, we have Harold Kaufman, not from our area, from some other area, sa man that you find difficult to admire, a man you are not going to feel sorry for. I can make no plea to you of mercy or sending this man back to a family. These things don't exist for Harold Kaufman. I can talk to you though in the terms of this justice, and I have an absolute right to do that, and Harold Kaufman sitting here, regardless of what you think of him or what anybody thinks of him, has that absolute right to expect justice, to expect that this trial will determine his guilt on the one offense charged. It will not be guided or governed, influenced by his other conduct at other times. It will not be governed by how repulsive he may be, or what he may have done, or the people with whom he has associated, or other activities in which he has engaged.

It must be decided on the specific evidence and we are talking about a sole issue, the specific evidence as to his mental competency, his sanity or insanity legally on December 16, 1963. If within that context, and only within that context, you find that Harold Kaufman had been proven guilty beyond a reasonable doubt, justice will have been served. We can ask no more. But if your verdict is in any other context, then justice has not been served.

We are not suggesting in any way that this is not [458] the duty you will perform. In the beginning, you took an oath that you would, and we haven't a doubt in our minds that this will be the duty and the job you will do, because we know you believe also that justice must be available for everyone. If it is not available for Harold Kaufman, where is the next step up the line? Who doesn't get the full measure of rights the next time? It must exist for everyone, and the term must be all-inclusive.

I say to you only perform your task, as I know you will, well. Make sure that this trial does nothing to impair our basic rights, basic concept of the rights of man, our fellow men. Make sure that you accord to Harold Kaufman the presumption of innocence which he is entitled to as a basic matter of right. Make sure that you

require the government to prove its case, if it can, beyond a reasonable doubt, that on December 16, 1963, Harold Kaufman was legally sane. Make sure that if there is a reasonable doubt, and we suggest strongly that there is much more than that, that if there is a reasonable doubt as to his sanity on December 16th, that your verdict be not guilty.

#### FINAL ARGUMENT IN BEHALF OF THE GOVERNMENT

MR. MARTIN: If it please the Court, gentlemen of the defense, Madam and gentlemen of the jury: I will not attempt to answer the very impassionate argument of counsel on justice, and I, as counsel for the government [459] would be the first to agree that we are here for the purposes of seeing that the defendant receives justice, and that is all that your government asks of you that the defendant receive justice by means of your verdict, and in order to give the defendant justice, your verdict must be based upon the evidence, and your government asks you only to consider the evidence, deliberate carefully, and return a verdict in accordance with your view of the evidence.

That is justice. That is how we obtain justice. That is how we maintain justice, and I repeat, as counsel for the government I heartily agree that we want justice, and

personally, I am a supporter of that theory.

But I ask you only to look at the facts of the case, and as we look at the facts of the case what do we have? We have the evidence from Detective Joe Kiernan from New York City. His testimony was to the effect that he had known the defendant, had known of the criminal associations of the defendant, had him under surveillance until the time that he finally arrested him, and there I think we have some evidence of justification for the belief that he was being watched and followed, because Detective Kiernan said that they watched him and his contacts with Jack Keller, and that they kept the building, or apartment building, under surveillance. They even had a couple of the apartments bugged. That is, they had [460] electronic listening equipment in there, so there was some watching.

Furthermore, the defendant, by reason of his activities had reason to believe that the police were looking for him, and Pat Scott, in her testimony, said that there were only about three people looking for him. The police, justifiable reason for looking for him. Jack Keller, to whom he owed some money. And I don't recall whether there was anybody else, but there was nothing imaginary about the people who wanted him and were looking for him. Oh yes, the F.B.I. All of which were very real, all of which he had reason to be afraid that some of them might accost him, at some time he might be taken into custody. That Jack Keller might insist upon getting the money that he thought was owed to him. None of this was imaginary. No hallucinations, no delusions at that time: None at the time Dr. Waitzel examined him. None at the time that he was examined in Springfield, and if you recall, he was there from January 28th, I believe, until about February 14th, going there within about six weeks of the date of the crime here, and if you recall Dr. Waitzel's testimony. I asked him specifically if the testimony of the witnesses that you have heard, Pat Scott and Joe Kiernan, would have a bearing upon your conclusions and your opinions and he said yes, that his opinions were partially dependant upon the truthfulness of that testimony, and let's examine Pat Scott's testimony. [461] Gentlemen, I won't discuss with you the character

[461] Gentlemen, I won't discuss with you the character of Pat Scott. You heard the testimony, but recall the relationship between the two began some time in August of 1963. She received, according to her own testimony, thousands of dollars from the defendant. They were together, or had an apartment together. They were associated very, rather closely, and that from the very time that she first met him until he was apprehended here in St. Louis, she said that he would go out of town and make hits or scores, and according to—that's her terminology, meaning that he would go out for purposes of robbing or

otherwise attempting to get money criminally.

And if you recall the testimony of the detective, it was around about November 1st when the defendant heard about Jack Keller getting someone to enforce payment from him, and I specifically asked Dr. Waitzel what different pressures and stresses did he have that would explain his criminal activity prior to November 1st that did not exist on December 16th other than the threat of Jack Keller.

Now, here we have a professional robber, according to Pat Scott's testimony, one who carries a gun occasionally or frequently, and had one in the apartment, and is charged in New York for having a gun, acting as an informer for the New York City Police Department against the person who claims that he owes some money, and is [462] one of the associates of the group in which he is traveling. And the detective agreed that there was an assumption of risk in acting as an informer. Sure, there is risk. There is risk in being a robber. There is risk in being an informer. There is risk in being a test pilot, a race driver, practically every profession, there is some type of risk, and counsel mentioned that fact that geniuses can be schizophrenic, and I call to your attention that a professional robber can also be schizophrenic, but does that make him a professional robber or did it make the genius, the fact that he had some kind of personality difficulties?

But let's examine just what does he have, or did he have. Dr. Waitzel, as far as he would go, said that when he examined him he was psychoneurotic, had some schizoid personality, and what was the origin of that? That originated because he was born in New York City of a poor family. Being born of a poor family, is that any reason? And it has been said that the Lord must love the poor people, because he created so many of us. Is that any reason for getting a psychosis? Is that an explanation for it? Pat Scott said he wanted to be the best criminal in New York. Yes, that's his chosen profession, and each of us has the ambition of being the best in our chosen profession or occupation; perfectly normal. But when you choose a criminal profession, nothing abnormal about [463] wanting to be the best.

Now, let's look at some of the things that he did around New York, for example. He was cooperating with the police. Kiernan said that he would always give him logical answers and information, all except when he was attempting to avoid telling something specifically, and the detective's conclusion was that he believed he was sane. But I believe he described him as, I don't know if he used the term "bum" or something of that sort, but it was some derrogatory term, or one that we wouldn't ordinar-

ily call one of our friends, but he was sane.

Now, let's look at this question about driving an automobile. Counsel mentioned the fact that he couldn't drive an automobile. Pat Scott said he couldn't drive, but he was apprehended in an automobile that had come from New York City. He was apprehended in an automobile which had been driven from Roosevelt Federal Savings and Loan Association to Alton, Illinois. If you can't drive, I don't think you can bring an automobile from New

York City to St. Louis.

There's a lot about Pat Scott's testimony. You can believe it or not believe it, and I submit to you that Pat Scott is the type of person, because of the relationship with the defendant, because of the fact that she had received quantities of money from him, that I don't think [464] that she would hesitate to give any answer or any testimony that she thought would help him. But we have this to remember about Pat Scott, and there's one feature about her which I think we all have to somewhat admire. She's a mother. Though the children are illegitimate, she wants those children. She fought all the way in court for custody of those children. And would a mother who feels like that about her children, allow her three children, or two children, to be in the custody of a person that she thought was insane in the least bit? Think of that when you examine Pat Scott's testimony.

Now, I don't know whether I should take too much time, but I'd like to call one thing to your attention. The Court mentioned to you that Dr. Paul Hartman, on motion of the defendant, had examined the defendant, and I would like to make this observation. I am curious as to why, after that examination was made, he was not called by them as a witness. Just think of that in connection with Dr. Hartman, but let's take the diagnosis of the doctors at Springfield that actually examined him.

Dr. Waitzel hadn't examined him since 1960. We are

interested in something that is proximate to the date of December 16, 1963, and the most proximate examination as of that date, I am talking about a thorough examination, would have been at Springfield, and the diagnosis at [465] Springfield was schizophrenic reaction, paranoid type in partial, rather stable remission. And you remember how Dr. Glotfelty explained that to you? He said that stable is, according to my idea or language, was more or less solid, and if you say rather stable, that is the higher classification of stable. I guess the table here is stable, but bolted down to the floor and it might be more stable, but he said that when a person reaches that point; the only point above it would be normal, and that he would be discharged from any hospital in the country.

Of course, Dr. Weiland said that he doesn't use the term cured, and I don't think they use it in tuberculosis or other diagnoses where you use the terms arrested and remission, but if you are dealing with this type of an individual, and they say that he is in rather stable remission, it means that he is just at the point of being normal. And I submit to you that you can be less than normal and yet be criminally responsible for your acts. Do you know right from wrong? Are you able to recognize that you are committing a wrongful act? Are you able to refrain from commission of that wrongful act? Those are some of the things to be considered in determining whether or not a person is legally sane and legally responsible for his criminal acts. We noticed that the defendant had enough control to stop any arguments with [466] Pat Scott whenever she more or less directed him to.

THE COURT: You have about two minutes.

MR. MARTIN: Thank you, Your Honor.

We noticed in the evidence other factors wherein he exercised control of himself. How many robberies has he committed? How many robberies is he going to commit in the future and claim that "I did it because I have an uncontrollable impulse to rob somebody to get money for Pat Scott"? Are we going to allow him to continue, and to accept such an excuse unless there is proof or evidence showing that he is mentally deficient to the extent you can say he is not criminally responsible?

MR. BARSANTI: If the Court please, I object to that misconstruction of the law by the government. It is not

the defendant's duty to prove anything.

THE COURT: Well, the Court will instruct the jury as to what the law is. All right. This is argument of counsel, and I have already instructed them several times. \*MR. MARTIN: Now, ladies and gentlemen, you heard the testimony. You heard the evidence. You know what the issues are, and I am confident if you consider the evidence and the facts in your deliberations, that you will return a verdict of guilty as charged. Thank you.

### COURT'S CHARGE TO THE JURY

THE COURT: Members of the jury:

[467] It now becomes my duty to give you instructions as to the law which you will use and be governed by and apply to the facts in this case in reaching your verdict on the questions that are presented to you for your decision.

You have listened to the evidence and the arguments of counsel and it now becomes my duty to instruct you as to the law. I can only give you these instructions orally as I am now doing. There is no provision in the law that permits me to give you your instructions in any other manner. It is, therefore, necessary that you pay close attention so that you may carry these rules of law to your jury room and there use and apply them to the facts of this case.

You should bear in mind that while it may appear from time to time that I am giving you special instructions, that is not correct. I am giving you instructions which should be received by you to apply as a whole. Don't attempt to separate them and disregard part of them and

use and apply the remainder.

It is my duty to pass on all questions of law and at the close of the argument to charge you with respect to the law; in other words, to tell you what the law is to guide you in your deliberations. It is your function and duty to pass on the facts, and when you have determined what those facts are, to apply the law as the Court shall give

it to you to those facts. In approaching and performing [468] your duties, you should have but one purpose; you should have a zeal and determination to do justice, exact and impartial, between the Government on the one hand and the defendant on the other. You have nothing to do with the matter of fixing punishment, that becomes the sole duty of the Court in the event the defendant is found guilty. You will, therefore, direct your attention to the testimony in the case and determine from it what the true facts of the case are and apply the law as I shall give it to you, to those facts, and thus arrive at a verdict under the law and the evidence.

You are the sole judges of the crediblity of the witnesses and the weight and value to be given to their testimony, as well as all the evidence and facts and circumstances detailed before you and which have been presented in this trial. In weighing and reconciling the testimony, you should look to demeanor and manner of the witness testifying, his willingness or unwillingness to answer; to the lack of interest, or interest, of any witness in the case; to the relationship of the parties; to the means of knowledge, or lack of knowledge of the facts about which such witness testifies; to the opportunity of the witness to know the facts about which he purports to testify; to the reasonableness or unreasonableness of the witness's testimony; to its probability or improbability, and whether the witness has made contradictory statements or not, [469] about material matters involved in this case, and thus having carefully considered all the matters, you must fix the weight and value of the testimony of each and every witness and of the evidence as a whole.

If you should conclude that a witness has willfully testified falsely to some material matter in the case, you should consider that in determining the credibility of the rest of such witness's testimony, and you are at liberty to reject all of such witness's testimony, as well as the part which you feel to have been willfully false.

In stating this to you I do not mean to imply that any witness has willfully testined falsely. I merely give you this as a guide to be used by you in determining the weight and value to be given the testimony before you.

This is a criminal case, Members of the Jury, as you know; and a criminal case, whatever its importance, whatever its seriousness, is hedged about with certain age-old rules. The burden to make out the guilt of the defendant on trial in this case is upon the Government; that burden the Government assumes in the beginning and carries throughout to the end, until it has met it by showing to you the guilt of the defendant beyond a reasonable doubt.

It has been and will be the Court's purpose in this case to express no opinion upon the facts, for that is your [470] province, and the Court does not propose, even if it had the power to do so, to influence your judgment on the facts to even the slightest degree. Therefore, if during this trial you have imagined or gained the impression that the Court had any opinion in regard to this case. so far as the facts are concerned, dismiss that impression from your minds, because the Court meant to express, neither by manner nor by voice, any opinion on the facts. If it should seem to you at any time during this charge that the Court has an opinion respecting what may or may not be a fact, you should still remember that the Court's conclusion is in no sense to weigh upon you or control you in your finding and determination of what the facts are in this case.

The burden of proof, as you have been told, is upon the Government. All of the presumptions of the law, aside from the evidence, are in favor of innocence and the defendant is presumed to be innocent until proven guilty. This presumption of innocence attends and protects the defendant throughout the trial until it has been met and overcome by evidence coming forward in the case, and it makes no difference from which side it comes, which shows and establishes the defendant's guilt beyond a reasonable doubt.

The Court further charges you that a reasonable doubt [471] is a doubt based on reason, and which is reasonable in view of all the evidence.

A reasonable doubt is a fair doubt based upon reason and common sense and arising from the state of the evidence. It is rarely possible to prove anything to an absolute certainty. Proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act upon in the most important of your own affairs. A defendant is not to be convicted on mere sus-

picion or conjecture.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

A reasonable doubt exists in any case when, after careful and impartial consideration of all the evidence, the jurors do not feel convinced to a moral certainty that a

defendant is guilty of the charge.

Prosecution in this case is based upon a statute which [472] is Federal law. The pertinent part of the statute reads susbtantially as follows: (18 U.S.C. Section 2113 (a))

"(a) whoever by force and violence, or by intimidation takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association;"

shall be punished as the statute provides. And the statute defines a "savings and loan association" as:

"the term 'savings and loan association' means any Federal savings and loan association ..."

The indictment in this case is based on this statute and reads as follows:

"The Grand Jury charges:

That on or about the 16th day of December, 1963, in St. Louis County, in the State of Missouri, within the Eastern Division of the Eastern District of Missouri,

# HAROLD KAUFMAN,

the defendant, did, by force and violence, and by intimidation, take from the presence of another, to wit, Lloyd A. Woollen, Manager of the Roosevelt Federal Savings and Loan Association, certain money, to wit, the sum of \$328.5 more or less, in lawful money of the United States, belonging to, and in the care, custody, control, management and possession of said Roosevelt Federal Savings and Loan Association, a Federal savings and loan association authorized and acting under the laws of the [473] United States, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation; that in committing the above offense, he, the said defendant, did put in jeopardy the life of the said Lloyd A. Woollen by the use of a dangerous weapon and device.

In violation of Section 2113(a) and (d), Title 18,

United States Code."

The indictment is not to be considered by the jury as any evidence of the defendant's guilt. It ought not, in your minds, create even a suspicion of guilt upon his part. It is merely the manner by which the case is brought before you, for your consideration, and the fact that an indictment has been returned ought not to be considered as any evidence of the guilt of the defendant. The defendant is presumed to be innocent, and that presumption continues with him until such a time as you become satisfied from the evidence of his guilt, and you must be so satisfied beyond a reasonable doubt.

Now, in a criminal case, the matter of intent is, of course, an essential element which must exist, in order for the accused to be criminally liable. Therefore, in order to find this defendant guilty, you must not only believe that he did the acts complained of, and of which he stands charged, but you must also believe that the acts were [474] intentional and knowingly done by the defendant, but you cannot find such acts were intentionally and knowingly done by the defendant, if you find he was in-

sane as explained elsewhere in this charge.

It is the position of the Government that the defendant, Harold Kaufman, did on the 16th day of December, 1963, while legally sane, by the use of a dangerous weapon, put the life of Lloyd A. Woollen, Manager of the Roosevelt Federal Savings and Loan Association, in jeopardy and intimidate him and took from his presence the sum of \$328.50, belonging to the Roosevelt Federal Savings and Loan Association.

The phrase "legally sane" is defined in other instruc-

tions which the Court will give to you.

For your guidance and assistance I shall now briefly

state the position of the defendant.

From the very beginning, the defendant has freely admitted that physically he performed the acts charged in the indictment. He has never disputed these facts, and does not now make them an issue in this case. Defendant's sole contention is that at the time of the offense, December 16, 1963, his mental condition was such that he was not criminally accountable for his conduct at that time.

Under his plea of "not guilty", the defendant has raised [475] the defense of insanity at the time of the alleged offense. The law does not hold a person criminally ac-

countable for his conduct while insane.

The term "insanity" as used in this defense means such a perverted and deranged condition of the mental and moral faculties as to render a person incapable of distinguishing between right and wrong, or unconscious at the time of the nature of the act he is committing, or where, though conscious of it and able to distinguish between right and wrong and know that the act is wrong, yet his will, by which I mean the governing power of his mind, has been otherwise than voluntarily so completely destroyed that his actions are not subject to it, but are beyond his control.

Temporary insanity, as well as insanity of longer duration, is recognized by the law, and to cast light on the mental condition of the accused at the time of the alleged offense, you may consider evidence of his mental state

both before and after that time:

The defense of insanity having been raised in this case, and evidence bearing on this defense having been adduced, the burden is upon the Government to establish beyond a reasonable doubt, as that term is more fully defined elsewhere in these instructions that the defendant was sane at the time of the alleged offense. If, upon considering [476] all the evidence, you believe beyond a reasonable doubt that defendant was sane at the time of the alleged offense, you should find him accountable for his actions at that time, but if you have a reasonable doubt as to his sanity at that time, you must acquit him even though you may find that he was sane at earlier and/or later times.

The rules of evidence ordinarily do not permit a witness to testify as to his opinions or conclusions. A so-called expert witness is an exception to this rule. A witness who by education and experience has become expert in any art, science, profession or calling may be permitted to state his opinion as to a matter in which he is versed and which is material to the case, and may also state the reasons for such opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves; and you may reject it entirely if you conclude the reasons given in support of the opinion are unsound.

The defendant has the constitutional right not to take the witness stand and testify, and you are not to draw any presumption of guilt or any inference whatsoever from defendant's decision to exercise his constitutional

right not to testify at this trial.

[477] Non-expert or lay witnesses are ordinarily not entitled to express their opinions for the jury to consider, but where such a witness has had the opportunity of associating with and observing the defendant and his acts and conduct over a period of time, then the witness is entitled to express his opinion as to the defendant's mental condition and his sanity as of the time he is alleged to have committed a crime, and you may give such testimony on the part of the lay witness such weight as you feel it deserves.

The defendant is only on trial for the robbery of Roosevelt Federal Savings and Loan Association on December 16, 1963; he is not on trial for any other act or conduct, and in this respect evidence of his connection with or involvement in any other criminal activity is not to be considered by you in determining his guilt at this trial.

I have caused to be prepared for you, member of the jury, a blank form of verdict. You will use the form that I shall submit to you whether you find the defendant guilty or not guilty.

When you have unanimously agreed upon a verdict, one of your number will sign it as foreman and return

it into Court.

You have nothing to do with the punishment; that is [478] for the Court. Your sole duty is performed when you have found upon the question of guilt or innocence of the defendant.

## SUPREME COURT OF THE UNITED STATES No. 890 Misc., October Term, 1967

HAROLD KAUFMAN, PETITIONER

v.

#### UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND GRANTING PETITION FOR WRIT OF CERTIORARI—April 1, 1968

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1281 and placed on the summary calendar.

Mr. Justice Marshall took no part in the consideration

or decision of this motion and petition.

